



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 30233516

Date: APR. 19, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, an entrepreneur in the field of information technology, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner's proposed endeavor is of national importance, that he is well positioned to advance the proposed endeavor, and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

"Advanced degree" means any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *Id.*

“Profession” means one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32),¹ as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term “national interest,” *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,² grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

Id.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual’s qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factors considered must, taken together, establish that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. *Id.* at 890-91.

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

² See also *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

II. ANALYSIS

At the time of filing his petition, the Petitioner proposed to work in the United States as a technology consultant in the field of electronics and wireless communications. In response to a request for evidence, the Petitioner proposed to work as an entrepreneur in the field of information technology. Specifically, the Petitioner indicated that he intends to work as the chief executive officer of his company, [REDACTED] which will be located in [REDACTED] Colorado, and that his company will provide a variety of services, including software and firmware updates on smartphones, tablets, laptops, and smart home devices, and engraving on such devices. On appeal, the Petitioner proposes to establish and operate [REDACTED] a U.S. software update company, and work in the field of transportation.

As indicated above, the Petitioner must first demonstrate qualification for the underlying EB-2 visa classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. The Director determined that the Petitioner is eligible for the EB-2 classification as an advanced degree professional, and we agree. The remaining issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of that classification's job offer requirement. We conclude that he is not. While we may not address each piece of evidence individually, we have reviewed and considered each one.

The Director determined that the record established the substantial merit of the Petitioner's proposed endeavor, but the Petitioner has not established that the proposed endeavor is of national importance, that he is well positioned to advance the proposed endeavor, and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification.

Due to the inconsistent information provided by the Petitioner at various stages regarding his proposed endeavor, it is unclear whether the Petitioner proposes to work in the United States as a technology consultant in the field of electronics and wireless communications, as an entrepreneur in the field of information technology, or as an entrepreneur in the field of transportation. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

On appeal, the Petitioner maintains that his proposed endeavor has national importance, that he is well positioned to advance the proposed endeavor, and that he offers contributions of such value that, on balance, it would be beneficial to the United States to waive the job offer and labor certification requirements.

The Petitioner contends that his proposed endeavor to establish and operate [REDACTED] a U.S. software update company, has national importance because of its potential to generate substantial economic growth and job opportunities. The Petitioner asserts that over the next five years, [REDACTED] plans to hire 122 employees, contributing to the expansion of the U.S. job market, and that each direct job created in the computer systems design and related services industry has a significant impact on generating additional indirect jobs, further boosting employment prospects across the nation and contributing to increased tax revenues for both federal and state governments.

In *Dhanasar*, we stated that an endeavor that has a significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance. *See Dhanasar*, 26 I&N Dec. at 890. The Petitioner has not submitted evidence to support the projections in the business plan. Absent relevant, credible, and probative evidence to support the Petitioner's claims, the record does not establish that the proposed endeavor's impact will be of national importance. Moreover, the Petitioner has not offered sufficient information and evidence to support that his company would employ a significant population of workers in an economically depressed area or that his endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. The Petitioner has not established the claimed fact with unsupported testimonial evidence alone. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (stating that simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings).

In addition, the Petitioner asserts that in line with the growing demand for skilled professionals in science, technology, engineering, and mathematics (STEM) fields, his company will address a shortage of STEM talent in the country by providing information technology services and training to other professionals in the field of information technology.

While we acknowledge the growing demand for skilled professionals in STEM fields, the U.S. Department of Labor addresses worker shortages through the labor certification process. Therefore, a shortage of qualified professionals alone is not sufficient to demonstrate eligibility for the national interest waiver. *See Dhanasar*, 26 I&N Dec. at 885.

Regarding the Petitioner's plan to provide training to other professionals in the field of information technology, the record does not show that this undertaking has broader implications in his field, as opposed to being limited to those who participate in his training sessions. While the Petitioner's plan to provide training to other professionals in the field of information technology has merit, the record does not sufficiently establish that his teaching or instructional activities offer benefits that extend beyond his students or trainees to impact the field of information technology more broadly. Likewise, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *See id.* at 893.

The Petitioner asserts that his company's intention to provide software and firmware updates and introduce new technologies to the U.S. market resonates with the U.S. administration's emphasis on technological leadership and innovations. The Petitioner also claims that his company will expand economic prosperity and opportunity by offering comprehensive information technology solutions that enhance business operations, reduce costs, and improve productivity. He further states that this emphasis on efficiency and cost reductions aligns with the U.S. administration's commitment to increasing economic productivity and ensuring the responsible allocation of resources, thereby solidifying the endeavor's national significance. The Petitioner further asserts that the presence of his company in the information technology sector carries significant weight in terms of national security, economy, and public health and safety because his company will contribute to the resilience of critical sectors against cyber threats and will safeguard vital aspects of the nation's functioning by maintaining and upgrading information technology infrastructure.

In *Dhanasar*, we indicated that we look for broader implications of the proposed endeavor and that an undertaking may have national importance, for example, because it has national or even global implications within a particular field. *See id.* at 889. While we acknowledge the Petitioner’s claims, he has not provided sufficient evidence to substantiate them. The Petitioner has not shown how his proposed endeavor to establish and operate [redacted] which plans to provide software and firmware updates on wireless portable devices and engraving on such devices, would make a significant impact on the field of electronics and wireless communications, the field of information technology, or the field of transportation more broadly rather than benefiting his own company and its clients or customers.

In addition, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work. Instead, we focus on the specific endeavor that the foreign national proposes to undertake. *See id.* As such, the Petitioner must demonstrate by a preponderance of the evidence that his proposed endeavor to establish and operate a company, which plans to provide software and firmware updates on wireless portable devices and engraving on such devices, is of national importance. While we acknowledge the importance of technological leadership and innovations in the U.S. market and economy and the importance of information security in national security, economy, and public health and safety, the Petitioner has not shown that his proposed endeavor would impact, for example, the U.S. market, the U.S. economy, national security, public health, public safety, or the U.S. information technology infrastructure more broadly rather than benefiting his own company and its clients or customers. The Petitioner has not otherwise provided sufficient information and evidence to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance. Without sufficient documentary evidence of its broader impact, the Petitioner’s proposed work does not meet the national importance element of the first prong of the *Dhanasar* framework.

Because the documentation in the record does not sufficiently demonstrate the national importance of his proposed endeavor required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not established eligibility for a national interest waiver. Therefore, further analysis of his eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose, and we will reserve these issues for future consideration should the need arise.³

III. CONCLUSION

The Petitioner has not established by a preponderance of the evidence that, as a matter of discretion, he is eligible for or otherwise merits a national interest waiver because he has not shown that his proposed endeavor is of national importance.

ORDER: The appeal is dismissed.

³ *See INS v. Bagambashad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).