



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 30354484

Date: APR. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a barber and barber instructor, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition. The Director concluded that the record did not demonstrate the Petitioner merits a discretionary waiver of the job offer requirement in the national interest. 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. Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).¹ Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.² If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality

¹ If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

² USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual>.

shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.³

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 USCIS may, as matter of discretion,⁴ 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.

II. ANALYSIS

The Petitioner proposes to establish a barbershop and barber school business for which he would work as its manager, barber, and barber instructor. The Director determined that the Petitioner established his eligibility for the underlying EB-2 classification as an individual of exceptional ability. However, the Director determined that the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Individual of Exceptional Ability

In determining the Petitioner’s eligibility for the underlying EB-2 classification as an individual of exceptional ability, the Director did not provide an explanation for this decision, only briefly stating in a request for evidence notice that the Petitioner “met at least three criteria.”⁵ Upon de novo review, the Petitioner has not established eligibility for the underlying EB-2 classification as an individual of exceptional ability in the sciences, arts, or business.

The Petitioner claimed that he meets four of the six evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii). For the reasons provided below, we conclude that the Petitioner does not meet the initial evidentiary requirements for classification as an individual of exceptional ability.

³ See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); see generally 6 USCIS Policy Manual, *supra*, at F.5(B)(2).

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

⁵ The Director’s decision states in a brief sentence that the Petitioner met the criterion for a license to practice the profession or certificate for a particular occupation under 8 C.F.R. § 204.5(k)(3)(ii)(C) without an explanation for this determination. This determination appears to be in error since the Petitioner did not claim or offer evidence for his eligibility under this criterion. The Director’s decision did not specify any other criteria met by the Petitioner.

An official academic record showing that the individual has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Petitioner submitted a course certificate from [redacted] stating that he “concluded the Traditional Barbering Course” with 800 class hours of “[h]aircut, shaving, finishing, and care techniques necessary for the practice of the barber profession” The certificate includes a list of the course content, including theoretical concepts, practical concepts, and internship. The Petitioner also submitted certificates indicating he attended multiple workshops relating to barbering.

However, the Petitioner has not established that any of the certificates meet the plain language of the regulation. The record does not include evidence relating to the parties issuing these certificates. The Petitioner has not sufficiently established that any of the certificates were issued from a “college, university, school, or other institution of learning” or that the certificates are “an official academic record.” Therefore, the Petitioner has not established he meets the requirements for the criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the individual has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B).

The record contains letters of recommendation from two of the Petitioner’s barber colleagues and from one of his barber clients attesting to his skills as a barber. However, the letters do not meet the plain language of the criterion because they are not from his current or former employer(s). Also, the letters do not indicate his dates of employment, his job duties, or whether he worked in a full-time capacity. Because the evidence provided does not demonstrate that he has at least ten years of full-time experience in his occupation as a barber and barber instructor, the Petitioner has not established that he meets the plain language of the criterion.

Evidence that the individual has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

To meet this criterion, the Petitioner submitted a statement from an accountant listing service revenues and billing for the company, [redacted] for each month of 2021. He also submitted print outs from three salary-related websites indicating the average salary of a barber in Brazil. However, the accountant’s statement relates to the company, [redacted] and does not indicate the Petitioner earned a salary or remuneration from this company. The record does not include evidence showing the revenue for [redacted] was the Petitioner’s salary or remuneration for his services as a barber or as a barber instructor. For these reasons, the Petitioner has not shown that he meets this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

To meet this criterion, the Petitioner submitted a brief article summarizing his barber work and his business, as well as advertisements for his barber instruction workshops. While the documents

indicate the Petitioner is a barber who offers barber instruction workshops, they do not show that he has been recognized for his achievements or significant contributions to his field of barbering or barber instruction, as required under the criterion. Therefore, the Petitioner has not demonstrated he meets this criterion.

The Petitioner has not established that he meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (F). Because the Petitioner did not satisfy the initial evidence requirements, we need not conduct a final merits analysis to determine whether the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

For the above stated reasons, we withdraw the Director's determination that the Petitioner is eligible for the underlying EB-2 classification as an individual of exceptional ability in the sciences, arts, or business.

B. National Interest Waiver

As discussed above, the Petitioner has not established his eligibility for the underlying EB-2 classification, and therefore is not eligible for a waiver of that classification's job offer requirement. However, we will discuss whether the Petitioner demonstrated a waiver of the labor certification would be in the national interest, the basis for the Director's decision.

The Director found that the Petitioner failed to demonstrate the proposed endeavor has substantial merit and is of national importance, as required by the first *Dhanasar* prong, or 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 under *Dhanasar's* third prong. The Director did not address whether the Petitioner is well positioned to advance the proposed endeavor under *Dhanasar's* second prong. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.⁶

The first prong of the *Dhanasar* analytical framework, 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner proposes to work in the United States as a manager, barber, and barber instructor for his new barbershop and barber school business located in south Florida. The Petitioner states his business would "offer a range of hair and beard services for men, hair cutting services for women and children, as well as barber training courses." The business plan indicates the business would also "sell an array of on-trend, premium haircare, shaving, and cosmetic products." The Petitioner plans

⁶ While we may not discuss every document submitted, we have reviewed and considered each one.

to expand the business to additional locations in [] Florida; Texas; and New York. Based on the foregoing, the Petitioner has established his proposed endeavor has substantial merit, and we withdraw the Director's determination to the contrary.

With respect to national importance, the Director found that the Petitioner did not demonstrate that his proposed endeavor "stands to impact the regional or national population at a level consistent with having national importance. Nor has [the Petitioner] shown that their specific work would have broader implications in the personal care services industry." The decision further states, "Here, the record does not demonstrate . . . how [the Petitioner's] endeavor stands to sufficiently extend beyond the clients that agree to utilize their services, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance."

The Petitioner argues on appeal that the Director incorrectly applied law or policy, and "the decision was incorrect based on the evidence in the record." (emphasis omitted). The Petitioner indicates that the Director implemented an incorrect policy without notice depriving him "of his right to regular process and is in violation of regulation and binding service policy" under 8 C.F.R. § 103.2(b)(8)(iv). In considering national importance of his proposed endeavor, the Petitioner argues that the Director only considered geography and employment, while disregarding other criteria such as national initiative. The Petitioner argues "the decision seems to suggest that such evidence that relates to [his] proposed endeavor as impacting a matter that the government has described as subject of national initiative or having national importance was evaluated with diminished evidentiary weight or dismissed in its totality." He further argues, "USCIS derogatorily and erroneously equates the size of geographical implication and the potential to employ U.S. workers as failure to show national importance." Upon de novo review, the Petitioner has not demonstrated that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

On appeal, the Petitioner argues that in addition to hiring employees and generating revenue, he would be "an instructor, a teacher, a mentor, and an example for hundreds of people who need a job and a position in society." He argues that his proposed endeavor would improve "societal welfare having substantial positive effect." In addition to his business increasing the U.S. economy, he contends the "vocational learning opportunities play a critical role in skill development and employability." He explains the importance of vocational development having theoretical knowledge and practical skills. The Petitioner relies on his professional knowledge and experience to show that he would teach skills to "underprivileged young people, who will have a trade, a job, a professional activity that gives them security, dignity, and a position in society" while equipping "the students to earn twice as much as what their family would earn combined."

The Petitioner's claimed societal welfare benefits are described in his statements provided with his response to a request for evidence. He claims that his vocational training of barber techniques will benefit underprivileged and unemployed young people by giving them an occupation and an income. The Petitioner intends to "impart education and skill development in youth so that they can live a life of dignity and respect" to promote financial independence, to develop skills that are not seasonal or topical, to improve chances of employment, and to earn a dependable livelihood for their families. The Petitioner further points out that the training program will not only teach skills, but would teach students "to communicate, work in teams and accomplish projects."

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. *Matter of Dhanasar*, 26 I&N Dec. at 893. Similarly, the Petitioner's teaching to vocational barber students and to existing barbers at workshops does not rise to the level of having national importance. The record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of personal care and barber services, as contemplated by *Dhanasar*: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* The evidence does not suggest that the Petitioner's work as manager, barber, and barber instructor for his new barbershop and barber school business would impact the personal care and barber services field more broadly.

On appeal, the Petitioner also argues his proposed endeavor has economic benefits. Instead of "merely" generating revenue for his private business and individuals, he argues that his business "actively creates financial bridges, and prompts economic developments that enhance and improve the functionality and monetary output of the nation's economy." The Petitioner's business plan focuses on the potential economic benefits of his proposed endeavor through the business' job creation and training of skilled barbers. The plan states, "[The business] will contribute to a reduction in the national unemployment rate by creating direct jobs and supporting indirect jobs." Also, the plan maintains that the sale of hair products "will support employment throughout the supply chain." The business plan also describes the business' intended location and start up plans; the Petitioner's professional experience; his ownership of the business; his intended roles as manager, barber, and barber instructor; the business' services; a market analysis of the barber industry in the south Florida area; and the business' projected marketing, financing, and staffing.

The business plan projects that in five years the business will create seven direct jobs; generate annual revenue of approximately \$550,000 while maintaining a 15% net profit margin; pay approximately \$345,000 in wages; and generate over \$50,000 in payroll taxes. Although we acknowledge these projections, the record does not sufficiently detail the basis for the plan's financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner has not provided corroborating evidence to support his claims that his business' future staffing levels and business activities stand to provide substantial economic benefits to underprivileged individuals, south Florida, and the United States. The Petitioner's claims that his barbershop and barber school business will benefit the U.S. economy and enhance societal welfare have not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide economic and societal welfare benefits. The Petitioner must

support his assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. He has not done so here.

The Petitioner expresses his desire to improve the quality of life for his prospective students by providing them with professional skills and economic stability, and to contribute economically to the United States. However, he has not established with specific, probative evidence that his endeavor will have broader implications in his field, will have significant potential to employ U.S. workers, or will have other substantial positive economic and social welfare effects to Florida or the United States. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating seven jobs; generating annual revenue of approximately \$550,000 while maintaining a 15% net profit margin; paying approximately \$345,000 in wages; and generating over \$50,000 in payroll taxes in a five-year period rises to the level of national importance. Also, without sufficient documentary evidence that his proposed job duties as the manager, barber, and barber instructor for his barbershop and barber school business would impact the personal care services industry more broadly, rather than benefiting his business and his proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The business plan further explains that the business' barber vocational trainings and workshops will "increase the number of skilled barbers in the [United States]" which will help "meet the growing demand for these services" and contribute "to the skilled labor market overall." His statements and business plan explain the expected population growth of the south Florida area. He claims his business would benefit from the population growth and would benefit economically from the affluent area having a higher annual income and disposable income for barber services. He further maintains the personal care and service occupations are expected to grow at a faster rate than other occupations. He also stresses the need for entrepreneurs in the United States and their benefits to the U.S. economy. The record includes articles related to the decrease of entrepreneurs in the United States and the expected growth in the beauty and personal care products market in the United States. With the appeal, the Petitioner also provides an article related to the importance of vocational training.

We recognize the importance of the personal care industry and related careers to the U.S. economy, and the significant contributions from immigrants who become successful entrepreneurs in the United States. However, merely working in the personal care field or starting a barbershop and barber school business is insufficient to establish the national importance of the proposed endeavor. Instead of focusing on the importance of an industry or field, or a shortage of workers in a field, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has 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." *Id.* at 890. The articles submitted do not discuss any projected U.S. economic impact, job creation, or societal welfare benefits specifically attributable to the Petitioner's proposed endeavor.

Beyond general assertions, the Petitioner has not demonstrated that the work he proposes to undertake offers innovations that contribute to advancements in his industry or otherwise has broader

implications for his field. The economic and societal welfare benefits that the Petitioner claim depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed work for his barbershop and barber school business and the claimed economic and societal welfare benefits to the United States.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Also, the Petitioner has not met the requisite first prong of the Dhanasar analytical framework. Therefore, the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.