



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

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

In Re: 30371918

Date: APR. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, who describes himself as a software quality assurance expert, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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, concluding the record did not establish that the Petitioner qualifies for a national interest waiver. 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” *Id.* 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,¹ 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded that the Petitioner qualified as a member of the professions holding an advanced degree. The record supports that determination. The remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner intends to work as an information technology (IT) consultant in software quality assurance and training. The Petitioner provides the following description of his proposed endeavor (quoted as written):

My proposed endeavor is the continuation, inside the United States, of my existing self-employment IT consultant services on Software Quality Assurance and Training through implementing my already successful software quality approach for US-based companies in multiple industries, solving the real and researched software quality gap US companies face and also training US-based and international individuals into becoming IT experts to fill the gap in the growing demand for IT professionals in the US, specially software testers.

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. *Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner's endeavor to provide consultancy services and contribute to the U.S. economy had substantial merit. The Director concluded, however, that the Petitioner did not sufficiently demonstrate that his proposed endeavor had national importance. In order to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. The Director stated that it was unclear how the Petitioner's consultancy services would have a broader impact on the field, rising to the level of having national importance. The Petitioner claimed that his proposed endeavor would save the United States trillions of dollars and provide opportunities for individuals to find new or better

¹ *See 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 to be discretionary in nature).

jobs in the field. In support of those claims, the Petitioner submitted articles and reports about software quality issues and the information technology industry. The Director determined, however, that while the documentation provided general information about the industry and emerging solutions, it did not speak to the Petitioner's specific proposed endeavor. The Director explained that, in determining national importance within the *Dhanasar* framework, the relevant question is not the importance of the field, industry, or profession in which the individual will work, but the specific endeavor that the individual will undertake. *Id.* at 889. The Director concluded that the Petitioner did not demonstrate that his company's services would extend beyond the organization or its clients in such a way that the proposed endeavor would serve to impact the industry or field more broadly.

On appeal, the Petitioner reiterates his argument for the national importance of his proposed endeavor. He provides an expert opinion letter from a university professor discussing small businesses in the United States, types of entrepreneurs, and the dynamics of entrepreneurship in the U.S. economy. The letter also summarizes the purpose of the Petitioner's company and includes generalized tables depicting job forecast projections in the United States. The professor uses data from the company's "operating model" to forecast revenues and predicts its growth potential based on the company's projected provision of "custom computer programming services" under the North American Industry Classification System, or NAICS, a standard used by Federal statistical agencies in classifying business establishments. Other than indicating that the company intends to operate its business under a particular NAICS category, the opinion letter does not explain how the Petitioner's specific endeavor to start a small business offering software quality assurance services will have a prospective national impact on the economy, nor does it discuss where the company will be located or the field of software integrity more broadly.

The opinion letter also uses an evaluation tool called RISE—an acronym for Readiness Inventory for Successful Entrepreneurs—to determine the Petitioner's potential entrepreneurial success based on his skills, abilities, and maturity. We note that this assessment is not relevant to the national importance of the Petitioner's endeavor under *Dhanasar's* first prong, but to the second prong, which discusses whether an individual is well-positioned to achieve a proposed endeavor.

Turning to the Petitioner's business plan, the document provides the following summary of his proposed endeavor (quoted as written):

[The Petitioner] endeavors to support tech companies and government entities of all sizes in their efforts to improve the quality and security of the software they are building and delivering, reducing the risk and cost of poor software quality in the U.S., and ultimately improving the lives of millions of people and organizations using those software applications every day in different industries, sectors, and markets. The Petitioner also endeavors to improve the quality of the workforce operating within the U.S. IT Industry by providing expert training and advice to QA Engineers who wish to improve their skills and knowledge, thus benefiting not only the specific industry but the overall U.S. economy. Moreover, [the Petitioner's] services will improve cybersecurity levels for American government and organizations by providing the highest level of security for their software and reducing cyberattacks, thus protecting people's data and reducing the nation's spending on cyber protection.

We observe that the business plan anticipates hiring a total of twelve individuals by its fifth year of operation; however, the costs and earnings projections are not supported by probative evidence. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. It is not clear how a company of the size and scope described in the business plan would positively affect “millions of people and organizations” and have a positive economic impact at the level of “substantial economic effects” contemplated by *Dhanasar*. *Id.* at 890. And while the plan cites shortages of professionals in the cybersecurity field in the United States, we observe that shortages in a field do not demonstrate that the Petitioner’s endeavor stands to have an impact on the broader field or otherwise have implications rising to the level of national importance. The relevant question is not the importance of the field, industry, or profession in which the individual will work. The relevant question, rather, lies in “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889.

Further, although the business plan highlights the Petitioner’s intention to provide “training” and “qualify individuals to work in the domestic software sector,” the record does not sufficiently demonstrate that his individual efforts as a small business owner will have the impact contemplated by *Dhanasar*. 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. *Id.* at 893. Here, we conclude the record does not establish that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact the field of computing, the software industry, or the U.S. economy more broadly at a level commensurate with national importance. While the Petitioner’s statements reflect his intention to provide consultancy services for his business clients, he has not provided sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. The Petitioner’s statements and business plan outline generalized descriptions of the services that the Petitioner intends to provide, and the articles and industry reports do not include insight into how any specific endeavor proposed by the Petitioner rises to the level of national importance.

The record does not establish that the Petitioner’s proposed endeavor is one of national importance as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *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 met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.