



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

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

In Re: 28446292

Date: FEB. 6, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an information technology (IT) entrepreneur, seeks 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. 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the 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 qualify for a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates EB-2 eligibility, 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 USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

¹ *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

- 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.

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions with a bachelor's degree and progressive post-baccalaureate experience equivalent to a master's degree under 8 C.F.R. § 204.5(k)(2). The remaining issue to be determined 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 earned a bachelor's degree in social communication in Brazil in 1984. After working in computer sales and marketing, in 1993 the Petitioner opened a computer shop and a related service business, also in Brazil. The Petitioner entered the United States in 2019 as an F-1 nonimmigrant student to study English as a second language.

In a "Professional Plan & Statement" submitted with the petition, the Petitioner stated: "My proposed endeavor in the United States will be to open my own company to continue working as a Computer Information Systems Manager/Entrepreneur in the U.S., planning and directing computer-related activities for other organizations."

The Petitioner indicated that his "initial plan is to buy an IT franchise." The Petitioner stated that he had "established contact with two IT companies," each of which has sold hundreds of franchises in the United States. The Petitioner indicated that one of the two companies "is one of the most forward-thinking IT franchises in the nation," whereas the other company "has a wider product portfolio . . . , and it could be a better business opportunity."

The Director issued a request for evidence (RFE), asking for a more detailed description of the proposed endeavor. In response, the Petitioner submitted a business plan, indicating that "[h]e wants to start an I.T. service providing company in [redacted] Florida" to "cater to small and medium enterprises." The Petitioner indicated that his "IT consulting firm" would later open locations in New York and California. The business plan does not mention either of the franchisors named in the initial submission. The business plan indicated that "the company will offer the implementation of Microsoft Solutions . . . and implementation of Cybersecurity solutions," and "will provide IT managed services" and "IT support for small and medium enterprises."

The first *Dhanasar* 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. *Matter of Dhanasar*, 26 I&N Dec. at 889. We look for broader implications. An 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 889-890.

In his initial statement, the Petitioner stated that he “will contribute directly to the field of information technology by assembling and leading teams in the development of critical solutions.” The Petitioner stated that his proposed endeavor would “[t]ake businesses to new heights of integration,” “[s]treamline and manage IT systems that will most benefit the more rural and economically underserved areas,” and “[i]mprove sales and services of companies in the U.S. by promoting their product or service at any place and any time without additional expenses and extra time needed.” The Petitioner asserted that his proposed endeavor would “help U.S. companies doing business in Brazil to seize market and investment opportunities.”

In a separate statement, the Petitioner discussed general information about the IT industry. This information does not establish the national importance of the Petitioner’s specific proposed endeavor. The discussion of the proposed endeavor was narrower, with few details. For example, the Petitioner asserted that he “is qualified to facilitate cross border IT projects.” The Petitioner stated that “he will use his skills to develop industry-wide structures, meaning he will improve his [customers’] productivity.” The Petitioner did not explain how improving his customers’ productivity is equivalent to “develop[ing] industry-wide structures.” The Petitioner also did not elaborate on the assertion that his proposed endeavor will “driv[e] technological transformation” and “improv[e] IT solutions.”

The Petitioner submitted an expert opinion letter from an associate professor of marketing at [redacted] who stated without elaboration that the Petitioner “can help U.S. companies to find the best solutions and improve productivity while improving costs,” and likely “will be asked to present at lectures, congresses, and seminars.” The Petitioner did not document this type of outside interest in his work.

In the RFE, the Director concluded that the Petitioner had established the substantial merit of the proposed endeavor, but the Director requested more information, supported by documentary evidence, to establish the proposed endeavor’s national importance.

In response to the RFE, the Petitioner submitted a business plan, indicating that “[h]e wants to start an I.T. service providing company in [redacted] Florida” to “cater to small and medium enterprises.” The business plan indicated that “[t]he business endeavor will potentially impact the U.S. in numerous ways.” In contrast to the original list of claimed benefits, which included providing services to customers and helping U.S. companies to do business in Brazil, the business plan emphasized claimed economic benefit within the United States, such as attracting investment and creating employment. We will discuss this business plan in further detail below.

The Director denied the petition, stating that the Petitioner had not established how the proposed endeavor “will have national or global implications within the field, will have significant potential to employ U.S. workers, will broadly enhance societal welfare or will impact a matter that the government has deemed as having national importance.” The Director concluded that the benefit from the proposed endeavor would be largely confined to the Petitioner’s company and its customers.

On appeal, the Petitioner asserts that the Director “did not give due regard to . . . [the] Business Plan, which . . . allows concrete projections of the benefits [the Petitioner] may offer the U.S.” The Director acknowledged the business plan in the denial notice. We agree with the Director’s conclusion that the Petitioner did not submit adequate evidence to support the claims in that business plan.

The business plan includes a table of “Projected Wages Payout in five years,” showing plans to hire a sales director, sales managers, clerks, and account managers, and to engage the services of technicians as contractors. This table indicates that the Petitioner would have a total of 18 employees and 30 contractors in its fifth year.

Another table, labeled “Summary of Employment Generation over five Years,” indicates that the proposed endeavor would produce 120 jobs during that time, comprising 56 full-time employees and 64 contractors. These sums, however, are inflated by counting the same hires over multiple years, adding each year’s total to the next year’s total. Elsewhere in the record, the Petitioner relies on the erroneous higher figure when discussing his company’s hiring potential.

The Petitioner did not cite supporting information for either version of the staffing projection, and did not establish that this level of staffing would have the “substantial positive economic effects” envisioned in *Matter of Dhanasar*, 26 I&N Dec. at 890.

The business plan also contends that the proposed endeavor will “address . . . the shortage of qualified and experienced I.T. professionals,” but did not explain how it would do so. The business plan indicates the company would be “highly reliant on skilled personnel,” but it does not show any infrastructure to train workers who are new to the IT field, or explain how the proposed endeavor would otherwise add new workers to the labor supply.

The business plan includes a chart worded in a manner that implies the company is already staffed and actively doing business. It states: “Our team is trained, specialized and certified,” and that “[w]e are partners of the main security players on the planet.” Elsewhere, the business plan states that the company already “has . . . state-of-the-art service and equipment.” But the record does not show that the company has advanced beyond the conceptual stage.

The Petitioner contends that the Director did not sufficiently consider “Industry Report[s] and Articles, which demonstrate the national importance of the Appellant’s proposed endeavor.” Reports and articles in the record discuss the IT industry, economic conditions in the areas where the Petitioner intends to establish businesses, and immigrant entrepreneurs, but these materials do not specifically describe the Petitioner’s proposed endeavor or its potential impact. Rather, these materials amount to background information about general subjects.

The Petitioner, however, must establish the national importance of the specific proposed endeavor; it cannot suffice for the Petitioner to establish the overall importance of a particular subject, occupation, or field. The term “endeavor” is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See, generally*, 6 *USCIS Policy Manual* F.5(D)(1), <https://www.uscis.gov/policy-manual>. The importance of an entire field or industry does not establish the national importance of one company within that field or industry.

Much of the discussion on appeal under the heading “The Proposed Endeavor’s National Importance” concerns the Petitioner’s background and experience. These factors, however, are more relevant to

the second *Dhanasar* prong, which concerns whether an individual is well positioned to advance the proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 893.

In light of the above conclusions, the Petitioner has not met his burden of proof to show the national importance of his proposed endeavor. Detailed discussion of the remaining *Dhanasar* prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the second and third prongs.²

III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.

² *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).