



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

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

In Re: 29846240

Date: FEB. 7, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks classification as a member of the professions holding an advanced degree. 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 Texas Service Center denied the petition, concluding that the record did not establish either the Petitioner's eligibility for the EB-2 classification or that a waiver of the classification's job offer requirement is 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 immigrant 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 eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 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 a 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.

II. ANALYSIS

The Director found that the Petitioner did not establish that he is a member of the professions holding an advanced degree, and as such did not establish that he qualifies for the EB-2 classification. The Director further found that the Petitioner did not demonstrate eligibility under any of the three required prongs of the *Dhanasar* analytical framework, and therefore did not establish that a waiver of the job offer requirement is in the national interest. The Petitioner proposes to operate an antiques cargo transportation business. Because, for the reasons discussed below, we agree with the Director that the Petitioner has not established the first prong of the *Dhanasar* framework, we reserve our opinion on the question of the Petitioner's eligibility for the EB-2 classification.² See *INS v. Bagamasbad*, 429 U.S. 25, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

Regarding the Petitioner's request for a national interest waiver, in analyzing the first *Dhanasar* prong the Director concluded that the proposed endeavor has substantial merit but not national importance. Specifically, the Director concluded that the Petitioner did not demonstrate that his services to transport antique cargo have the potential to impact a region, the nation, or the field more broadly. The Director also concluded that the Petitioner did not offer sufficient information or evidence to establish that the endeavor may have substantial positive economic effects.

On appeal, the Petitioner contends that the Director made only conclusory statements in determining that the record does not establish the endeavor's national importance and did not sufficiently evaluate or address the evidence submitted. The Petitioner notes that his company is "already fully operational and meeting consumer demand for shipping of antique cargo." The Petitioner further asserts that the business plan demonstrates that the company is currently shipping to several states, has plans to expand to additional states soon, and will hire additional employees in the coming years. The Petitioner also contends that because shipping involves moving across multiple states, this demonstrates the broad impact of the proposed endeavor. The Petitioner also emphasizes the evidence in the record that demonstrates the growing demand for antiques, the value of historical and antique items, the recent issues in supply chain disruptions, and the importance of the shipping and logistics industries. The

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).

² To qualify as an advanced degree professional, a noncitizen must be a member of the professions, with "profession" defined as an occupation listed in section 101(a)(32) of the Act, or an occupation that requires a bachelor's degree for entry into that occupation. See 8 C.F.R. § 204.5(k)(2). The Director concluded that although the record shows that the Petitioner possesses the foreign equivalent of a master's degree in social work, the record does not establish that the occupation of antique cargo transportation entrepreneur is a "profession" within the meaning of the statute and regulations. The Director found therefore that the Petitioner did not establish that, based upon this proposed endeavor, he would be eligible to be classified as a member of the professions holding an advanced degree.

Petitioner contends that, taken cumulatively, these factors demonstrate the national importance of the proposed endeavor.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

In support of the Petitioner's claims regarding the growing demand for antiques and the value of historical items, the Petitioner submitted several articles about antiques in general; their importance, value, and appeal; and information regarding the United Nations definition of cultural property and the prohibition on its illicit import, export, and transfer. In support of the Petitioner's claims regarding recent global supply chain disruptions and the importance of the shipping and logistics industries, the Petitioner submitted information about the American Jobs Plan and the Biden administration's efforts to improve supply chain through improvements to freight logistics. We also note that the record contains articles about the importance and value of entrepreneurship and of immigrants to the U.S. economy.

While the record does demonstrate the importance of cargo shipping, logistics, and the cultural and social value of antiques and other historical items, there is not sufficient documentary evidence in the record to demonstrate that the Petitioner's proposed endeavor has the potential to impact these fields at a level commensurate with national importance. In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* at 889. These articles do not discuss the Petitioner's proposed endeavor, its potential impact, or otherwise demonstrate that the endeavor stands to have an impact on the antiques market or the shipping and logistics industries that would rise to the level of national importance.

We also conclude, upon de novo review, that the Petitioner's business plan, and the other information in the record regarding the company's formation and existence, do not establish the national importance of the proposed endeavor. The business plan states that the company currently has 5 employees and projects that, by 2027, it will have a total of 105 employees and pay \$7 million in payroll. The business plan also projects that the company will earn approximately \$11 million in profit by 2027. However, the plan does not provide any basis to support these projections. As such, we cannot assess whether the business plan's stated revenue projections and job creation estimates are credible. Moreover, even were we to assume that the estimates are credible, the record does not contain sufficient documentary evidence to establish that this amount of revenue earned, or jobs created, would result in "substantial positive economic effects" commensurate with national importance as contemplated by *Matter of Dhanasar*. *Id.* at 890. Any business or economic activity has the potential to positively impact the economy and the industry in which it operates; however, the Petitioner has not offered a sufficiently direct connection between his company's activities and any demonstrable economic effect. The record does not contain an evidentiary basis either to support the

stated economic projections or to conclude that the economic effects of the proposed endeavor have the potential to rise to the level of national importance.

The business plan also claims, as the Petitioner notes on appeal, that the endeavor will have nationwide benefits because it will support the transportation and warehouse sector, create infrastructure for the delivery of furniture, improve logistics infrastructure, and enable American companies to sell more products online. However, we conclude that the record does not contain sufficient objective, documentary evidence to establish the endeavor's potential prospective impact on infrastructure or the transportation sector. Although the business plan claims that the company will have such a broad impact that it will ensure that "every American has the opportunity to quickly, efficiently, and at an affordable price," ship antique cargo, the record does not contain sufficient documentary evidence to demonstrate that the company stands to do so at a level that rises to national importance.

Although the record reflects the Petitioner's efforts to establish his cargo shipping company, and his intention to provide valuable services to his clients, the Petitioner has not offered sufficient information or evidence to demonstrate that the prospective impact of the proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not extend beyond his students to impact his field more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact the shipping industry, antiques market, or the U.S. economy at a level commensurate with national importance.

Upon de novo review, we conclude that the Petitioner has not demonstrated the national importance of the proposed endeavor. Because the documentation in the record does not establish national importance as required by the first prong of the *Dhanasar* framework, the Petitioner 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 our opinion regarding whether the record satisfies the Petitioner's qualification for the EB-2 classification or the remaining *Dhanasar* prongs. See *INS v. Bagamasbad*, 429 U.S. at 25 (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 the applicant is otherwise ineligible).

III. CONCLUSION

Because the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework related to national importance, we conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.