



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

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

In Re: 30817609

Date: FEB. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur with experience in frozen fruit distribution, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We initially dismissed the Petitioner's appeal, but subsequently reopened it on service motion. 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, under section 203(b)(2) of the Act. Next, a petitioner must then demonstrate 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 that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,<sup>1</sup> grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;

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<sup>1</sup> *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 individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.<sup>2</sup>

## II. CHRONOLOGY

In September 2023, rather than dismissing the appeal on its merits, for efficiency we dismissed the Petitioner's appeal as moot when we determined that he has a subsequent, approved EB-2 petition. The Petitioner filed a complaint in the United States District Court for the Southern District of Florida, which is currently pending. *Garcia-Garcia et al v. Jaddou*, Case No. 1:23-cv-23379-CMA (S.D. Fla. filed Sept. 3, 2023). In November 2023 we reopened the Petitioner's appeal *sua sponte*, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), to consider the merits of the claims contained in his appellate brief. The Petitioner was permitted a period of 30 days in which to provide a supplemental brief.

In the Petitioner's supplemental brief he asserts, "[g]iven that both petitions are substantially identical to each other and seek the same immigrant visa classification, the approval of the latter petition strongly indicates that the first petition is also meritorious and warrants approval." He, therefore, requests that we sustain the appeal so that he may use the benefit of the earlier filing date of the instant petition as a priority date, to apply for adjustment of status to that of lawful permanent resident.<sup>3</sup> We note that each petition is separate and independent and must be adjudicated on its own merits. In addition, a petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1).<sup>4</sup> Further, we note that a denied EB-2 petition will not establish a priority date. *See* 8 CFR §204.5(e)(3); *see also* 7 USCIS Policy Manual A.6(C)(3), <https://www.uscis.gov/policy-manual>.

## III. ANALYSIS

The record reflects that the Petitioner has gained over 10 years of experience as an entrepreneur in the United States, where he has served as owner and vice president of sales and logistics for [REDACTED] since 2008.<sup>5</sup> The documentation submitted shows that [REDACTED] Florida is engaged in the import, distribution, and sale of frozen fruits produced in Mexico by [REDACTED] [REDACTED]<sup>6</sup> and that the Petitioner is its sole employee.

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>7</sup> Accordingly, 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.

<sup>2</sup> *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> The instant petition was filed on September 2, 2020; the approved petition has a priority date of February 22, 2023.

<sup>4</sup> *See also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

<sup>5</sup> The record indicates that the Petitioner initially received E-1 nonimmigrant classification in 2008 as the beneficiary of a petition filed by [REDACTED], along with several extensions of his status from 2010 to 2020.

<sup>6</sup> The record shows that [REDACTED] is run by the Petitioner and members of his family.

<sup>7</sup> The Director indicated that since the Petitioner qualifies as a member of the professions holding an advanced degree, he need not evaluate whether the Petitioner also qualified as an individual of exceptional ability.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating:

I am proud to say that my marketing strategies have enabled me to capture world renowned clients, including [redacted] [redacted]. . . . By communicating directly with my clients, I am able to produce tailor made products precisely to the clients' specifications, further building trust and reliance on [redacted]

....

I plan on continuing to run my U.S. company, [redacted] and making it [a] commercial success, selling and distributing frozen fruits to U.S. and international conglomerates, such as [redacted] and [redacted] and attaining millions in sales. As such, I hope that my visa petition will be approved so that I may pursue to my endeavor in Frozen Fruit Distribution in the U.S. and promote the U.S. economy and health of its citizens.

In addition, the Petitioner initially provided an Impact Analysis and Business Plan dated June 2020 indicating:

The company serves as the U.S. sales representative of the Mexican manufacturer of frozen fruits, [redacted] Having an office in Miami allows [redacted] to serve as an intermediary between its Mexican supplier and U.S. clients . . . . The fruit is delivered directly after being processed and warehoused in [redacted] Texas.

Among the Company's products are the following: individually quick-frozen strawberries; block-frozen strawberries, with or without sugar; strawberry puree; individually quick-frozen mango; block-frozen mango; creamed mango; individually quick-frozen papaya and papaya puree.

....

Fruitsolutions has laid out the following goals designed to ensure its future success:

- To add blueberry and blackberry to its product offering.
- To build the Company's brand through online communications, participation in industry events, and direct outreach to clients.
- To further penetrate the U.S. market through the identification of new buyers of frozen fruit and fruit preparations
- To provide distribution services for other fruit producers, as long as the products are complementary to those of [redacted]

On appeal, the Petitioner maintains that he has demonstrated the national importance of his proposed endeavor of "delivering frozen fruit products to top U.S. food manufacturers." The Director

determined that the Petitioner demonstrated the proposed endeavor’s substantial merit but not its national importance. For the reasons provided below, we agree with the Director’s determination that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.<sup>8</sup>

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 Dhanasar*, 26 I&N Dec. at 889. The Petitioner has provided evidence relating to the importance of imported fruit to the America economy and an increased demand for frozen food during the COVID-19 pandemic. The Petitioner must demonstrate, however, the national importance of his specific, proposed endeavor rather than the national importance of frozen fruit distribution.

In *Dhanasar*, we further 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.

Throughout the record and on appeal, the Petitioner emphasizes his “over ten (10) years of experience” in frozen fruit distribution. The Petitioner’s experience and abilities in his field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.

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. *Dhanasar*, 26 I&N Dec. at 889. On appeal, the Petitioner asserts that the Director “disregarded the current and future positive economic effects of [his] Frozen Fruit Distribution endeavor.” Specifically, the Petitioner references recommendation letters from [redacted] clients, business invoices the company sent to its clients, the company’s 2017-2020 tax returns, an expert letter from Professor M-B-S with [redacted] [redacted] and an Updated Impact Analysis.

The Petitioner provided a letter from L-B-, a project manager at [redacted] who indicates that [redacted] is one of its four suppliers of frozen strawberries for its market in the United States and Canada. She states that the company modified its product packaging, storage, and sugars to align with [redacted] sustainability goals and nutrition commitments. In addition, a letter from J-A-, a purchasing coordinator of [redacted] in New Jersey, states that the Petitioner’s company is essential to her company as its main supplier of frozen strawberries and one of its larger importers.

The Petitioner asserts that the above authors indicate their companies “depend on [redacted] for thousands and even millions of dollars’ worth of frozen fruit to manufacture and produce their

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<sup>8</sup> While we may not discuss every document submitted, we have reviewed and considered each one.

products.” We acknowledge that the aforementioned letters of support, as well as others not discussed in this decision, detail the Petitioner’s effectiveness and skills in his previous and current work as a frozen fruit distributor in the United States, but they do not address the national importance of his proposed endeavor.

Similarly, in offering his opinion regarding the national importance aspect of the Petitioner’s proposed endeavor, Professor M-B-S- asserts that “by bringing his expertise in supply chains, food distribution, and business management to the United States, [the Petitioner] will be an important, experienced member of a niche workforce in a specialist field that is fulfilling a growing demand from American consumers, ensuring economic prosperity in American trade flows, and working towards overcoming supply chain issues and consumer demand changes brought by COVID-19.” As stated, the Petitioner’s knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong. In addition, he does not sufficiently explain the basis for his conclusions regarding the positive economic impact of the proposed endeavor.

The expert opinion letter also provides data and statistics regarding the steady growth in the demand for fruit imports and the large percentage of fruit the United States imports from Mexico, and emphasizes the resulting ongoing demand for specialists in the field of fruit importation and distribution. The Petitioner also submitted market and industry reports related to the increased demand for frozen food sales related to the COVID-19 pandemic.

The professor concludes that the Petitioner’s endeavor is “of merit and national importance, given its potential benefit to the United States food supply chains and logistics through the streamlining of products from Mexico to the United States, particularly the delivery of specific fruit products to a growing demand from American consumers.” While we acknowledge that there is an ongoing demand in the field of frozen fruit distribution for persons who possess the Petitioner’s skills, training, and experience, neither the Petitioner nor the individuals who provided letters in support of the petition sufficiently explain how the Petitioner’s work as a frozen fruit distribution specialist would meaningfully impact this demand or the field of food distribution supply chains and logistics.

USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int’l*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen’s eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, as noted, much of the content of the advisory opinion letter is lacking relevance because it discusses the importance of the Petitioner’s industry and occupation rather than addressing how the specific proposed endeavor would satisfy the national importance element of the first prong of the *Dhanasar* framework. Simply stating that his work would support an important industry is not sufficient to meet the “national importance” requirement under the *Dhanasar* framework.

Moreover, the Petitioner has not established that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Within his response to the Director's request for evidence, the Petitioner provided an Updated Impact Analysis from visabusinessplans.com.<sup>9</sup> The analysis indicates that [REDACTED] "plans to generate nine (9) U.S. jobs by the end of Year 5 . . . ." <sup>10</sup>

The Updated Impact Analysis also indicates the company has projected wholesale revenues of \$10,571,000 in the first year; \$11,628,082 in the second year; \$13,953,678 in the third year; \$15,349,055 in the fourth year; and \$16,883,983 in the fifth year." Further, based on those projected wholesale revenues, the analysis provides the company's projected five-year "Pro-forma Profit and Loss Statement," showing its net profit before taxes will total \$575,895 in the first year; \$618,713 in the second year; \$801,982 in the third year; \$912,832 in the fourth year; and \$1,074,872 in the fifth year.

In his appeal brief, the Petitioner argues that the Updated Impact Analysis demonstrated the economic impact of his endeavor because it indicated that, in addition to adding 9 direct jobs, [REDACTED] will generate indirect employment among "the manufacturers and suppliers that it works with for a total of five hundred seventy-four (574) indirect and induced jobs." The Petitioner concludes that based on the indirect and induced jobs mentioned in the Updated Impact Analysis the record demonstrated that his endeavor "has and will continue to substantially affect economic activity at a national level."

The Updated Impact Analysis bases its job creation predictions on [REDACTED] projected revenues, applying modifiers based on a 2019 report published by the Economic Policy Institute. The Updated Impact Analysis, however, does not explain how the company's projected wholesale revenues, costs of goods sold, and expenses were calculated. The record, similarly, lacks supporting evidence demonstrating that the projected revenues in the Updated Impact Analysis present a realistic basis for employment creation predictions. Here, the Petitioner has not established the economic impact of his proposed endeavor by a preponderance of the evidence. *See Chawathe*, 25 I&N Dec. at 375-76. Furthermore, even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that the revenues and potential job creation of the proposed endeavor rises to the level of national importance.

In addition, while the Petitioner's five-year sales forecast indicates that his future projects for clients have growth potential, the record does not demonstrate that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. For instance, although the Updated Impact Analysis provides projections on anticipated revenue, staffing levels, and indirect job creation, the Petitioner has not offered sufficient evidence that the areas where his company will operate are economically depressed. He has not shown that he would employ a significant population of workers in those areas. The record does not establish that his endeavor would offer the regions or their population a substantial economic

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<sup>9</sup> We note that the analysis is written on the company's letterhead but does not identify who performed the evaluation and is unsigned.

<sup>10</sup> The analysis includes the Petitioner's position of "Vice President of Sales and Logistics" in its list of nine personnel to be hired "during Year 1 – Year 5."

benefit through employment levels, business activity, or tax revenue.<sup>11</sup> Nor does the expert letter from Professor M-B-S- mention any potential job numbers or detail any revenue benefits for regional areas or the nation.

As observed by the Director, the Petitioner did not provide sufficient information regarding his proposed endeavor or sufficient supporting evidence to establish a strong connection between the proposed endeavor's activities and substantial economic benefits (such as job creation or tax revenues) on a level commensurate with 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 impact his field more broadly. *Dhanasar*, 26 I&N Dec at 893.

Similarly, the proposed endeavor here may very well positively impact the businesses that engage the Petitioner for his services, but the evidence does not suggest that the Petitioner's services will be available on a level that has potential national implications in the field of frozen food distribution supply chains and logistics. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner has also asserted that his proposed endeavor "impacts a matter that U.S. government entities has described as having national importance and is subject to a myriad of national initiatives." Specifically, the Petitioner submitted a copy of President Biden's Executive Order 14017 of America's Supply Chains which highlights the importance of addressing disruptions in food and agriculture supply chains.

The Petitioner claimed that his proposed endeavor addresses this priority highlighted in the executive order because it "has the potential to help food supply chains disruptions by streamlining the distribution, processing, and sales of fruit products to American markets and consumers," an area in which he has experience and training. However, the fact that a petitioner is qualified for and performs in a position in an industry or sector that is the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. The Petitioner must still demonstrate the potential prospective impact of his specific endeavor in that area of national importance, and he has not met that burden.

As discussed above, the documentation in the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. 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.<sup>12</sup>

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<sup>11</sup> The Petitioner's evidence does not specify where the created direct and indirect jobs' workplaces would be located, and whether those job creations would have substantial positive economic effects in the context of those areas.

<sup>12</sup> See *INS v. Bagamasbad*, 429 U.S. 24, 25 (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).

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.