



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

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

In Re: 28786067

Date: FEB. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a chief executive officer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or 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).

The Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be 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 because the Petitioner did not establish that his proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. at 884. Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

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. Because this classification requires that the

individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

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).² Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.³ If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 U.S. Citizenship and Immigration Services (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.

II. ANALYSIS

The Petitioner states that he has more than 20 years of experience as an executive officer with local and multinational corporations. His professional experience includes strategic planning, finance, supply chain, commercial negotiation, and project management. He states that his proposed endeavor is to serve in the position of chief executive officer of [REDACTED] a designer and manufacturer of door and trim products and custom cabinetry based in Florida. In this position, the Petitioner states that he will provide "quality building materials (prehung doors, trim and cabinetry) to national, state and local builders, and to contribute to solving the country's increasing need of housing at a fair and reasonable cost."

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

² If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

³ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

⁴ 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 Petitioner asserts that he is eligible for the EB-2 classification as a member of the professions holding an advanced degree and as an individual of exceptional ability. With the initial filing the Petitioner submitted evidence of his education and experience, evidence of his claimed eligibility as an individual of exceptional ability, a business plan describing his proposed endeavor and claimed eligibility for a national interest waiver, and recommendation and support letters. He also submitted industry reports and articles discussing the residential construction industry and general labor shortages.

A. Member of Professions Holding an Advanced Degree

The Petitioner asserts that he qualifies for advanced degree professional classification by virtue of foreign education that he claims is equivalent to a U.S. master of business administration degree, in accordance with 8 C.F.R. § 204.5(k)(3)(i)(A). The Acting Director found that the Petitioner qualifies for classification as a professional holding an advanced degree, however, the Director did not explain the basis for this determination. After reviewing the record, we disagree with the Acting Director's determination.

As noted above, a petition for an advanced degree professional must include evidence that a petitioner possesses a "United States academic or professional degree or a foreign equivalent degree above that of baccalaureate [or] A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." 8 C.F.R. § 204.5(k)(2). In addition, a petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12).

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner submitted a diploma, titled *MBA (Master En Direccion De Empresas)*, from [redacted] in Spain. He also submitted an academic evaluation, stating that the degree awarded in 1998 is the foreign equivalent of a U.S. master of business administration degree.

At the outset we note that the name on the diploma does not match the Petitioner's name. The diploma is issued to [redacted] and the name stated in the academic evaluation is [redacted]. The Petitioner does not provide any documentation to demonstrate that he is the same individual to whom the degree was issued. Nor does he explain why the name on the degree differs and the last name differs in spelling by one letter from his claimed name on all other documents in the record, including his passport. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

According to the American Association of Collegiate Registrars and Admissions Officers (AACRAO)⁵ Electronic Database for Global Education (EDGE):⁶

The *Master/Magister* represents attainment of a level of education comparable to 6 months/1 semester or up to 2 years of graduate study in the United States, based on coursework.

An additional note on this credential in EDGE states:

These *títulos propios* (post-graduate titles) exist outside the official titles sanctioned by the Ministry of Education and Science. Because these titles are not officially sanctioned by the government, they are not officially recognized though are valued by private employers.

EDGE does not determine that this type of credential is equivalent to a U.S. master's degree as claimed. Additionally, the record does not include the Petitioner's academic transcripts listing the courses he completed or the number of years of study of each academic program in order to make a full and accurate determination of any equivalency.

The record also includes a "Certificate of Graduation" issued to the Petitioner in 1996 from the [redacted] [redacted]. The record does not include academic transcripts accompanying this certificate. Nor does the record include an academic evaluation of this certificate.

In light of the above, we disagree with the Acting Director's conclusion that the Petitioner has established that he is advanced degree professional in accordance with 8 C.F.R. § 204.5(k)(3)(i). However, because the Petitioner was not on notice of these issues, this does not form the basis of our dismissal. The Petitioner must address and resolve the inconsistencies in his academic records and the academic evaluation in any further filings.⁷

B. Substantial Merit and National Importance

The Acting Director determined that while the Petitioner established that the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance as set forth under the first prong of the *Dhanasar* analytical framework. We agree, for the reasons explained below.

⁵ AACRAO is a nonprofit professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries. See <http://www.aacrao.org/who-we-are>.

⁶ We consider EDGE to be a reliable source of information about foreign credential equivalencies. See *Confluence Intern., Inc. v. Holder*, Civil No. 08-2665 (DSD-IJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). See also *Viraj, LLC v. Holder*, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

⁷ The Petitioner also claims eligibility for the EB-2 classification as an individual of exceptional ability. However, the Acting Director did not evaluate the Petitioner's evidence to determine whether he satisfies at least three of six categories of evidence listed under 8 C.F.R. § 204.5(k)(3)(ii), nor did she conduct a final merits determination to decide whether the evidence in its totality shows that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. We decline to make an analysis and determination on this claim in the first instance on appeal. However, should the Petitioner overcome other deficiencies noted herein in any further filings, the matter would be remanded to the Director for further consideration and analysis of the Petitioner's eligibility for classification as an individual of exceptional ability.

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

Following initial review, the Acting Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Petitioner's response to the RFE includes an expert opinion letter, a personal statement, additional letters of support and recommendation, and additional information financial information for the Petitioner's proposed employer, [REDACTED]

After reviewing the Petitioner's RFE response, the Acting Director determined that the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has substantial merit. However, she concluded that the Petitioner had not demonstrated that his proposed endeavor had national importance. The Acting Director stated that the record did not demonstrate that the Petitioner's intended contributions to the field will extend beyond his employer and its clients. Additionally, the Acting Director noted that, while the recommendation and support letters in the record claim that the Petitioner has influenced the field, the letters do not provide specific examples. The Acting Director concluded that the Petitioner has not demonstrated eligibility for a national interest waiver and further analysis of his eligibility under the second and third *Dhanasar* prongs would serve no meaningful purpose.

On appeal, the Petitioner submits a brief and asserts that the Acting Director erred in determining that the impact of his proposed endeavor would not extend beyond his employer or have a potential broader impact in the field. He further asserts that the Acting Director erred in concluding that he did not establish that he was well-positioned to advance the proposed endeavor, 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 the second and third *Dhanasar* prongs. In his brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that he merits a national interest waiver.

In denying the petition, the Acting Director states that the Petitioner's "past record and potential prospective impact point to a single impact with a company." The Petitioner asserts on appeal that the Acting Director conflates the first and second *Dhanasar* prongs and "makes the ultra vires suggestions – not supported by law – that prospective impact to a company, alongside the broader field, may not have national importance."

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.

To support the claimed national importance of his proposed endeavor, the Petitioner references an expert opinion prepared by [redacted] as well as recommendation letters from former employers praising the Petitioner's education, experience, past success, personal qualities, and the results he achieved. However, these qualities relate to the second prong of the *Dhanasar* framework, that the individual is well-positioned to advance their proposed endeavor, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the Petitioner's specific endeavor has national importance under *Dhanasar*'s first prong.

We acknowledge that the expert opinion includes an analysis of the national importance of the Petitioner's proposed endeavor. In his analysis [redacted] cites to 2021 industry reports on residential construction in the United States, stating "the volume of spending for new construction is expected to keep rising in the United States and is forecast to reach over \$2 trillion in 2025." [redacted] then discusses the positive economic effects of the Petitioner's proposed endeavor with [redacted] based on industry reports and statistics of small business employers in the United States. However, [redacted] does not discuss any specific financial figures or contributions to economy of [redacted] the business the Petitioner proposes to direct. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinion is of little probative value as it does not meaningfully address the details of the Petitioner's specific proposed endeavor and why it would have national importance. [redacted] does not elaborate on how the Petitioner's specific proposed endeavor will have a prospective impact on the United States, including the national or global implications on residential construction, the potential to employ U.S. workers, or the positive economic effects. Rather, his opinion is general in nature, concluding that, because the Petitioner's proposed endeavor is to work for a small business in a high demand industry, it has national importance.

The Petitioner also references his personal statement to support the national importance of his proposed endeavor. As noted above, to establish national importance, the Petitioner must demonstrate the proposed endeavor's impact. The Petitioner states that his proposed endeavor will "contribute an additional 5 to 6 million dollars in Federal Taxes in the next five years," as well as contribute to state sales and payroll taxes, employ U.S. workers, and provide support for affordable housing. The Petitioner includes financial projection statements dated March 3, 2023 and signed by the Controller of [redacted]. According to the income tax projection in the record, the projected incremental increase in income tax in each year from 2023 to 2027 ranges from approximately \$150,000 to \$250,000, with a total increase of approximately \$1.5 million since 2021. These incremental figures are not consistent with the Petitioner's statement that he will contribute an additional \$5 million in federal taxes over the next five years. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of evidence submitted in support of the requested immigration benefit. *See Matter of Ho*, 19 I&N Dec. at 591-592.

We acknowledge the Petitioner's appellate claims that the Acting Director acted ultra vires in disregarding the prospective impact to the company "alongside the broader field" to demonstrate national importance. However, we do not agree that the requirement to demonstrate the potential prospective impact of the proposed endeavor is a novel one. Here, the Acting Director properly considered the prospective impact to [REDACTED] but determined that the record did not demonstrate that this impact would reach the level of national or global implications contemplated by *Matter of Dhanasar*.

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 "the specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. The evidence does not suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner's experience will reach beyond benefitting [REDACTED] or have broader implications within the field of residential construction. The record does not establish that the Petitioner's proposed endeavor stands to impact the field as a whole.

As set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

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. On appeal the Petitioner erroneously states that the Acting Director concluded that he was not well-positioned to advance his proposed endeavor, 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. However, in her decision the Acting Director states that analysis of these two *Dhanasar* prongs would serve no meaningful purpose and provides no analysis of the evidence in the record. However, 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.⁸ *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

⁸ As noted above, should the Petitioner overcome other deficiencies noted herein in any further filings, including his eligibility for EB-2 classification and the national importance of his proposed endeavor, the matter would be remanded to the Director for further consideration and analysis of the Petitioner's eligibility for the requested benefit.

III. CONCLUSION

As the record does not establish that the Petitioner has met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner is not eligible for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.