



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

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

In Re: 29846549

Date: FEB. 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a sound engineering technician, seeks classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. *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 that the Petitioner qualified for classification as a member of the professions holding an advanced degree but 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. 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 a member of the professions holding an advanced degree 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.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest

waiver if the petitioner demonstrates: (1) that the noncitizen’s proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

We first note that the record does not support the Director’s conclusion regarding second-preference eligibility. The Director asserted, “In the instant case, the [P]etitioner submitted evidence with Form I-140 which establishes [he] has completed his Bachelor in Business Administration and thus qualifies as a member of the professions holding an advanced degree.” The Director further stated, “Therefore, at this time, USCIS does not need to evaluate whether the [Petitioner] also qualifies as an alien of exceptional ability.” The regulations define an “advanced degree” as “any United States academic or professional degree or a foreign equivalent degree *above that of a baccalaureate*.” 8 C.F.R. § 204.5(k)(2) (emphasis added). Although the regulations also contemplate a combination of a “United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty” as equivalent to an advanced degree, the Director did not address whether the Petitioner followed his baccalaureate degree, dated 2015, with at least five years of progressive experience in the specialty. *Id.* The Director erred by concluding that a baccalaureate degree alone “qualifies [the Petitioner] as a member of the professions holding an advanced degree.” *See id.* Therefore, we withdraw the Director’s conclusion that the Petitioner qualifies as a member of the professions holding an advanced degree with a baccalaureate degree alone.

Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See id.*; *see also 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”); *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).

A. Whether the Proposed Endeavor has National Importance

The Petitioner described the proposed endeavor as a plan “to own and operate a [m]usic [s]tudio and [p]roduction [c]ompany” in [redacted], Georgia. The Petitioner also stated he would “offer professional training courses (in the form of social action), free of charge, to the population in an unfavorable socioeconomic situation.” The Petitioner submitted a business plan, which elaborates that the Petitioner’s music studio would “serv[e] the following audiences: gospel singers; new artists on the market; independent singers; independent bands.” The business plan further summarizes the music studio’s services, including audio recording, musical composition and musical arrangement

consultation, audio mixing and mastering, session musicians, voice-over and automated dialog replacement recording, and audio engineering and mixing training sessions. The business plan reiterated the Petitioner's assertion that he would provide free lectures and children's music lessons to the public.

The business plan asserts that the music studio would employ a sound engineering technician, a film and video editor, an audio and video technician, a camera operator, a receptionist, and two electricians in the first year of operation, adding one additional sound engineering technician, audio and video technician, and camera operator, and two additional film and video editors by the fifth year of operation, for a total of 12 workers, including the Petitioner. The business plan further asserts that it would create approximately 42 indirect arts, entertainment, and recreation jobs.

The extent of the Director's discussion of the first *Dhanasar* prong is, "The first prong, substantial merit and national importance, is met," without further analysis.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The Petitioner's proposed endeavor of operating a music studio and production company appears to benefit the Petitioner and the clients or customers to whom the Petitioner would provide his services. However, the record does not establish how the proposed endeavor of operating a music studio and production company in [redacted] Georgia, may have "national or even global implications" within the field of music recording, music composition, or any other field. *See id.* at 889. Likewise, the record does not establish that employing a total of 12 workers, including the Petitioner, in [redacted] Georgia, demonstrates "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. We acknowledge that the Petitioner asserts that he will offer some free services to the local public, including lectures and music lessons for children. Although the free community services support the conclusion that the proposed endeavor has substantial merit, the record does not establish how the proposed endeavor may have the type of broader implications contemplated by *Dhanasar*'s national importance criterion. We have reviewed the record in its entirety; however, it does not establish that the proposed endeavor has national importance. *See id.*

Based on the reasons discussed above, we withdraw the Director's statement to the extent that it indicates the proposed endeavor has national importance. Therefore, the record does not satisfy the first *Dhanasar* prong. *See id.* Because the record does not establish that the proposed endeavor has national importance, the remainder of the *Dhanasar* framework is moot. Nevertheless, we will address the denial basis before us on appeal.

B. Whether the Petitioner is Well Positioned to Advance the Proposed Endeavor

Turning to the Director's stated basis for denial, the Director concluded that the record does not establish the Petitioner is well positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong, specifically because it "fails to demonstrate that the [P]etitioner's work constitutes a record of success or progress in his field, or has garnered a degree of interest in his work from relevant parties, that would rise to the level of rendering him well positioned to advance his proposed endeavor."

On appeal, the Petitioner reasserts that he has "more than 10 years of work in the music industry." He reiterates that he previously operated a production company in Brazil, and he has experience working as a sound engineering technician for several Brazilian recording artists and TV and radio soundtracks. The Petitioner also summarizes his experience offering music and recording instruction. The record does not establish that the Petitioner is well positioned to advance the proposed endeavor, for the reasons explained below.

Dhanasar contemplates four, non-exhaustive, general factors that may demonstrate an individual is well positioned to advance a proposed endeavor: "the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals." *Matter of Dhanasar*, 26 I&N Dec. at 890.

Regarding the first factor, the record contains copies of a diploma and an academic transcript written in a language other than English, accompanied by certified translations of the documents in English. As translated in the record, the diploma indicates that the [REDACTED], in Brazil, granted the Petitioner a bachelor's degree, "given the completion of the Administration Course." The diploma is dated December 2015; however, it indicates that the Petitioner completed the referenced coursework in June 2015 and he graduated that August. In turn, the academic transcript lists the title of "subjects" the Petitioner studied, the courses' "load" value, his attendance percentage, an unspecified "average" ranging between "5.00" and "9.00," and a "status" of either "sufficient" or "approved." However, the academic transcript—and the remainder of the record—does not elaborate on the content of the courses beyond the subject titles, or otherwise provide sufficient information to establish what "the completion of the Administration Course" may have prepared the Petitioner to do and how well positioned he may be to do it. *See id.*

Relatedly, the record contains copies of an affidavit and certificates written in a language other than English, accompanied by certified translations of the documents in English. As translated in the record, the documents indicate that the Petitioner "was a student of [REDACTED] in the free course of piano from February 1998 to February 2000, attending piano practice and theory lessons," that he "attended the [REDACTED] with a course load of eight hours, on September 20, [2012]" and that he "attended, on January 24-27, 2013, the [w]orkshop [REDACTED] [REDACTED] with a course load of "40 hours." Similar to the diploma and academic transcript discussed above, the affidavit and certificates—and the remainder of the record—do not elaborate on the content of the two-year, eight-hour, and 40-hour courses, respectively, beyond their titles, or otherwise provide sufficient information to establish what his attendance in those training courses may have prepared him to do and how well positioned he may be to do it. *See id.*

Next, affidavits in the record, as translated in English, assert that the Petitioner “worked as a music producer, musician, and arranger (freelancer) at [redacted] company” in [redacted] Brazil, since November 30, 2016, up to [July 2022]” and that, simultaneously, he worked as “[a]dministrator, music producer, recording technician, and mixing engineer” at [redacted] in [redacted] Brazil, between September 2014 and September 2022. We note, however, that neither affidavit clarifies whether the Petitioner worked for both companies on a full-time or part-time basis, and we take administrative notice that [redacted] Brazil, are approximately 300 miles apart, casting doubt regarding the extent to which the Petitioner performed his responsibilities at both locations simultaneously. Doubt cast on any aspect of a petitioner’s proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Without more, the doubt cast regarding the extent to which the Petitioner performed his responsibilities simultaneously at two locations approximately 300 miles apart undermines the reliability and sufficiency of the work experience affidavits, and of the remaining evidence in the record. *See id.* Accordingly, the record does not establish the extent to which the Petitioner’s experience working at [redacted] company in [redacted] Brazil, and at [redacted] Brazil, prepares him to advance the proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

Regarding the second factor, we acknowledge that the record contains a business plan, discussed above. However, the plan provides minimal probative information regarding the Petitioner’s model or plan for future activities. Instead, the document primarily provides generalized information regarding the music recording industry and small businesses, and it summarizes the Petitioner’s qualifications and experience.

Even to the extent that the business plan addresses the Petitioner’s model or plan for future activities, it contains arbitrary, unsubstantiated, contradictory, or otherwise implausible, material information that casts doubt on its reliability and sufficiency. Specifically, the business plan provides estimates to anticipate total revenue of \$8,641,639.20 within the first five years of operation; however, the estimated growth is arbitrary, unsubstantiated, and contradictory. The plan expects “audio recording,” “musical composition and musical arrangements,” “mixing and mastering,” “session musicians,” and “voice-over and ADR” revenue to grow at a multiplier of 1.35 each year, whereas “training” revenue would grow at a multiplier of 1.2 each year. The plan does not establish why it expects steady growth of 35% in five of its six revenue categories for each of its first five years of operation, but only 20% growth in the sixth category, as opposed to 20% growth in all six categories, 35% growth in all six categories, or any other projected growth trend. Moreover, the business plan separately indicates overall annual growth declining from 35% between the first two years of operations, 25% between the second and third years, 15% between the third and fourth years, to only 5% between the fourth and fifth years; however, the annual revenue for the first five revenue categories increases by a multiplier of 1.35 each year, directly contradicting the stated decline in annual growth from 35% to 5%.

Regardless of the arbitrary, unsubstantiated, and contradictory growth projections, the business plan’s baseline used to calculate its revenue specifically requires a constant income beginning at the rate of \$400 per hour, eight hours per day, 22 business days per month. This calculation erroneously anticipates 264 (22 * 12) business days per calendar year; however, to meet the revenue goals, the company would need to operate at the same capacity on at least three weekend days plus additional weekend days to offset government, cultural, and religious holidays falling on weekdays. Moreover,

even if the business plan reasonably calculated the number of business days on which the recording studio would operate, the revenue baseline (and the growth projections) assume that the business would be in operation for a full eight hours each business day, without factoring cancellations or periods during which no customers or clients would use the studio's services. The record does not establish why this level of constant revenue, beginning with the first day of the first year of operation, without interruption for five years, is plausible.

We further note that the business plan acknowledges that at least 20 nearby competitors already provide the services the Petitioner's company would provide; however, the plan does not establish why it asserts the proposed endeavor would generate more than \$8 million within the company's first five years of operation, despite at least 20 nearby competitors already providing those services to the customer base.

For the reasons discussed above, the arbitrary, unsubstantiated, contradictory, or otherwise implausible, material information in the business plan casts doubt on its reliability and sufficiency, and, consequently, on the reliability and sufficiency of the remaining evidence in the record. *See Matter of Ho*, 19 I&N Dec. at 591. Therefore, the record does not establish that the Petitioner's model or plan for future activities indicates that he is well positioned to advance the proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

Regarding the third factor, the record does not establish what progress toward achieving the proposed endeavor the Petitioner may have made. For example, neither the business plan, discussed above, nor the remainder of the record identifies the proposed name of the Petitioner's recording studio, in order to confirm whether the Petitioner has even registered to do business in the State of Georgia, as described in the record, or whether he otherwise made progress toward achieving the proposed endeavor. *See id.* We note in particular that the Petitioner apparently presently resides in Florida, a substantial distance away from the proposed business location of Georgia.

Finally, we acknowledge that the record, including information submitted on appeal, contains letters of interest from various individuals or organizations. However, the letters that express interest in receiving the Petitioner's services are dated after the Petitioner filed the Form I-140, Immigrant Petition for Alien Workers, in November 2022. A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Whether individuals or organizations are interested in receiving the Petitioner's services is material because it is expressly contemplated as a factor in the second *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 890. Because the letters that express interest in receiving the Petitioner's services are dated after the Petitioner filed the Form I-140, they present a new set of material facts that cannot—and do not—establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. The record does not otherwise establish that the Petitioner has received interest of potential customers, users, investors, or other relevant entities or individuals that may indicate he is well positioned to advance the proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. As a separate basis of ineligibility, because the record does not establish the Petitioner is well positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the third *Dhanasar* prong. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, in addition to the requisite second prong, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.