



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

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

In Re: 27441707

Date: FEB. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner merited a national interest waiver as a matter of discretion. 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. Section 203(b)(2)(B)(i) of the Act.

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

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 discretion¹, 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 is a civil engineer with several years of experience in the construction of metal scaffolding and other building support structures. He initially stated that he intends to continue working in this field in the United States, including training construction workers. The Director determined that the Petitioner established his eligibility for the EB-2 classification as a member of the professions holding an advanced degree.² Therefore the sole issue on appeal is whether the Petitioner merits a national interest waiver, as a matter of discretion.

The first prong of the *Dhanasar* analytical framework, concerning the substantial merit and national importance of the proposed endeavor, 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. *Dhanasar*, 26 I&N Dec. at 889.

In his initial description of his proposed endeavor, the Petitioner stated that he “seeks to bring his experience in the area of civil construction to the United States, along with offering training to professionals in the field in order to meet the demand of teams, companies and other engineers.” After review of the record, the Director issued a request for evidence (RFE), seeking in part further evidence to show that this endeavor met the first prong of the *Dhanasar* analytical framework. In response, the Petitioner submitted a business plan for [REDACTED] a company he founded several months after he filed the petition and would direct. He stated that this company would provide civil construction services, and that he would teach his employees and other construction workers “about efficient and sustainable construction processes.” As the director and owner of [REDACTED] the Petitioner stated that he will “lead the company and will be responsible for coordinating the company’s operating, commercial, and financial strategies and coordinating the work of other employees.”

The Director determined that the Petitioner’s business plan and RFE response constituted an impermissible material change to his proposed endeavor. A petitioner may not make material

¹ *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

² The record includes a diploma and transcripts from the [REDACTED] in Brazil which show that the Petitioner was awarded a bachelor in civil engineering after five years of study. In addition, two letters from employers in Brazil confirm that he has the required five years of progressive, post-baccalaureate experience in the field to establish that he is a member of the professions holding an advanced degree.

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). Because of this material change in the petition, the Director concluded that the national importance of the Petitioner's proposed endeavor was "doubtful," and he therefore did not meet the first prong of the *Dhanasar* analytical framework.

On appeal, the Petitioner asserts that the business plan and RFE response were not a material change to his proposed endeavor, "since the endeavor has always been comprise [*sic*] of working with specialized structures in the civil engineering construction field along with training other professionals." He further asserts that the RFE response addressed the deficiencies identified in the RFE, and provided a more detailed explanation of his proposed endeavor.

The purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), 103.2(b)(12). In this case, the Petitioner made significant changes to his proposed endeavor in responding to the RFE that changed its nature and structure from employment as a civil engineer with a U.S. company to working as an entrepreneur and director of his own company. We note that in his initial submission, the Petitioner stated that his experience and skills "would be vital to any company offering [the Petitioner] a position in their company." In addition, he did not mention starting his own company or serving as its director, or performing duties such as "overseeing the overall performance of the business," "determine[ing] the company's service offering," and "maintain[ing] lasting bonds with clients." As the *Dhanasar* framework requires an analysis of the substantial merit and national importance of the specific endeavor proposed by a petitioner, such a change is material to their eligibility for a national interest waiver. So we agree with the Director's determination that the Petitioner's new proposed endeavor included in his RFE response was an impermissible material change to the petition.

We further note that a petitioner must meet eligibility requirements for the requested benefit at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's plans to establish and direct a new company formed after the filing date of his petition cannot retroactively establish eligibility. For these reasons, we will focus our analysis on the Petitioner's initial statement and evidence regarding his proposed endeavor.

In support of the substantial merit of his initial proposed endeavor, the Petitioner submitted articles and reports about government plans to invest in infrastructure, the rebuilding of which would be led by civil engineers. Additional evidence submitted in response to the Director's RFE included a report about the use of metal in constructing hurricane-resistant homes. This evidence sufficiently establishes the substantial merit of the Petitioner's proposed endeavor in the area of business.

Regarding the national importance of the Petitioner's proposed endeavor, the Petitioner highlighted his "expertise in metal structures and... his innovative training methodology," and referred to a report from the Royal Academy of Engineering (United Kingdom) about the financial impact of the engineering field. But as stated above, the focus of the first prong of the *Dhanasar* analytical framework is the potential prospective impact of the specific proposed endeavor. Consideration of a petitioner's skills and work experience is relevant to the second prong, in which we determine whether they are well positioned to advance their proposed endeavor. And evidence concerning the

economic impact of the entire field of engineering does not aid in establishing the national importance of the Petitioner's specific endeavor.

The Petitioner also stated that his plans to educate, train, and coach his team will lead to improved efficiency and better results for companies in the United States, and that this would "expand the benefit of his endeavor beyond his immediate reach." He included a translated copy of training materials he developed for his previous company in Brazil concerning the construction of scaffolding and other structures using metal tubes. But the Petitioner does not explain how his training would be adapted for use in an existing company employing him or for working and training conditions in the United States construction industry.

More importantly, much like the petitioner's plan in *Dhanasar* to teach STEM subjects to students at the middle school and university levels, here the Petitioner has not submitted evidence to show that any such training would impact the fields of civil engineering or construction more broadly. *Id.* at 893. The Petitioner submitted letters from his former employees who had participated in his training program and state that it helped them to progress in their careers. While the program undoubtedly impacted those workers who participated in it, and would have the potential to do so if implemented within a company in the United States, the letters do not demonstrate that that benefit would extend beyond those particular workers.

Other evidence concerning the national importance of the Petitioner's proposed endeavor include a letter from an engineering professor who reviewed the Petitioner's educational records and work experience letters. He opined that the Petitioner "would be of great contribution to the United States" as his proposed endeavor would create jobs and contribute to the nation's economy. However, the writer does not provide details regarding the nature and extent of these predicted contributions, and does not refer to evidence supporting his assertions. This evidence is thus insufficient to aid in establishing the national importance of the Petitioner's proposed endeavor.

The Petitioner also submits additional evidence on appeal, consisting of articles and reports about the U.S. construction industry and foreign investment. Like the previously submitted articles and reports discussed above, these materials show that the Petitioner's proposed endeavor is of substantial merit in the area of business. But they do not address the national importance of his specific endeavor, as they focus on the overall impact of the construction industry and foreign investment.

For all of the reasons explained above, we conclude that the Petitioner has not established that his proposed endeavor is of national importance. He therefore does not meet the first prong of the *Dhanasar* analytical framework.

III. CONCLUSION

The Petitioner is eligible for the EB-2 classification as a member of the professions holding an advanced degree, but he has not established his eligibility under the first prong of the *Dhanasar* analytical framework. 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 the second and third prongs of the *Dhanasar* analytical framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976)

(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 an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.