



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

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

In Re: 30107164

Date: FEB. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an accounting and tax specialist, 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 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. 884 (AAO 2016). 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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner 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. at 889, provides the

framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as 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 determined that the Petitioner was a member of the professions holding an advanced degree.² The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner states that he has more than 20 years of experience as a tax and accounting specialist. He is currently employed with a tax and accounting firm in Florida. He states that, through his current employer, he intends to work with small- and medium-sized businesses to “comply with reporting obligations, and above all, to help U.S. businesses use their profits and investments strategically and intelligently to increase their business capacity and ability to employ more professionals.”

With the initial filing the Petitioner submitted evidence of his education and experience, a personal statement 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 financial and tax services industries.

Following initial review, the 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 updated personal statement, an expert opinion letter, and articles discussing the importance of financial management for businesses and the benefits of immigration to the economy.

In his updated personal statement, the Petitioner states his proposed endeavor will “help companies identify opportunities to optimize their operations, reduce costs, and improve overall financial performance while also contributing to the broader economic development and prosperity of the nation.” He discusses “tax projects” that can benefit businesses, the importance of tax planning and cost analysis, and describes a project he worked on for his current employer.

After reviewing the Petitioner’s RFE response, the Director determined that the Petitioner had established that he is well-positioned to advance his proposed endeavor and that he submitted sufficient evidence to demonstrate that his proposed endeavor has substantial merit. However, she concluded that the Petitioner had not demonstrated that his proposed endeavor had national

¹ See also *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 to be discretionary in nature).

² The record demonstrates that the Petitioner holds the equivalent of a U.S. bachelor’s degree awarded in 2007, followed by more than five years of progressive experience. See 8 C.F.R. § 204.5(k)(3)(i)(B).

importance, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Director determined that the record did not demonstrate that the Petitioner's proposed endeavor will have a regional or national impact at a level consistent with having national importance, or that the Petitioner's work will have broader implications in his field of endeavor, going beyond his own business and clients. Additionally, the Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of his prospective contributions to the United States, an urgent national interest in his contributions, the potential creation of jobs, or that his self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief and asserts that the Director "erroneously applied a higher standard of proof, ... and has failed to consider the totality of the evidence provided in the adjudication of the case." 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.

A. Substantial Merit and National Importance

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. The relevant question is not the importance of the field, 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 Id.* 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.

Although the Petitioner submits articles and industry reports describing the importance of entrepreneurship on economic growth, many of these reports are not specific to the field of financial services.³ One report from the Flanders District of Creativity, titled "Internationalization of SMEs," discusses the potential economic impact of small and medium enterprises participating in international markets, but does not specifically address the Petitioner's field of endeavor in tax and accounting. Further, the report is dated 2008, nearly 20 years ago, and is based on studies of Belgian enterprises, while the Petitioner's proposed endeavor is in Florida. One report, titled "Small Businesses, Job Creation and Growth: Facts, Obstacles and Best Practices," includes no author or date. The Petitioner cites to this article to support that "small- and medium-sized companies account for a disproportionately large share of new jobs." However, the Petitioner does not explain how this article demonstrates that his proposed endeavor in working for an accounting firm with small- and medium-sized businesses will result in job creation or growth. An additional report from the Immigration Policy Center from 2013 discusses the achievements of immigrant scientists and engineers but is not

³ While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

specific to the Petitioner's field of tax and accounting services. Much of the Petitioner's evidence relates to the importance of financial services to businesses generally, rather than his specific proposed endeavor. As noted above, the Director determined that the Petitioner's proposed endeavor has substantial merit, and we agree. However, the question we are examining here is national importance. Even considering the articles and reports collectively and in the totality of circumstances, we still conclude that they do not support a finding that his specific proposed endeavor has national importance.

The Petitioner also submits his personal statements to support the national importance of his proposed endeavor. As noted, to establish national importance, the Petitioner must demonstrate the proposed endeavor's impact. 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." *Matter of Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner states that his experience in tax and accounting will contribute to the U.S. economy by increasing business capacity and professional employment opportunities for U.S. companies, he has not supported these assertions with sufficient independent, objective evidence.

The Petitioner also references an expert opinion prepared by [redacted] of [redacted] [redacted]. We acknowledge that the expert opinion includes an analysis of the national importance of the Petitioner's proposed endeavor. In her analysis [redacted] generally describes the roles and responsibilities of an accountant. She states that the Petitioner's "services will be instrumental in the nation's future development," and "his expertise would only add to protecting the nation's economy and wealth." However, [redacted] does not discuss the details of the Petitioner's specific proposed endeavor, beyond listing his job duties with his current employer. 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] [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 financial services, the potential to employ U.S. workers, or the positive economic effects. Her opinion is general in nature, concluding that tax and accounting professionals provide services of national importance. "In determining national importance, the officer's analysis should *focus on what the beneficiary will be doing* rather than the specific occupational classification." 6 *USCIS Policy Manual* F.5(D)(1), <https://www.uscis.gov/policy-manual> (emphasis added). [redacted] does not provide a substantive analysis of the Petitioner's specific proposed endeavor or suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States.

The Petitioner claims that the denial is deficient because the Director did not consider the entirety of the evidence in the record. While we agree that an adjudicator should consider the relevant evidence in the record, the Petitioner does not sufficiently support his claim that there was relevant evidence that the Director did not consider. The Petitioner does not cite to or describe which specific evidence

was not given consideration. We note that the decision discusses each of the claimed pieces of evidence the Petitioner lists in his brief. Nevertheless, we address them again herein.

The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the general importance of financial services to businesses. However, 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.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the remaining *Dhanasar* prong.⁴ See *INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

⁴ Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, that he is 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. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response. The Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner met the first and third *Dhanasar* factors and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that he meets all of the three *Dhanasar* prongs.