



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

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

In Re: 29827955

Date: FEB. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial manager, seeks classification as a member of the professions holding an advanced degree. *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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he 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 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 demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

¹ *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 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree, and we agree with that determination. 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

The Petitioner, a financial manager, proposes to initiate a training and consulting platform for the benefit of entrepreneurs, businessmen and businesswomen to assist them in achieving stability and financial growth. In a business plan submitted in support of the petition, the Petitioner described this project, called as follows:

The platform will allow entrepreneurs, professionals, businessmen and businesswomen to understand the strategies that they must follow to manage and control their businesses in order to be highly profitable and sustainable. All of this in the most simple and didactic manner.

The Petitioner further stated that the program includes three excellence models targeting large and medium-sized companies, start-ups, and professionals, and described them in further detail as follows:

The content of the first two Models of Excellence (Large and Medium-Sized Companies and Start-Ups), will be mainly aimed at achieving the following:

- ✓ Clear definition of the company's vision, mission, values, policies and procedures and their proper disclosure and compliance within the organization.
- ✓ Understanding, development and control of the company's Business Plan as well as financial management models, financial projections, sensitivity models,

Feasibility Studies for CAPEX and Action Plans by business area, in order to achieve the goals and the implementation strategies.

- ✓ Successful management and administration of the company's Cash Flow. Managing and taking advantage of cash surpluses, cleverly addressing cash deficits, and management during crisis situations.
- ✓ Implementation of savings programs for times of crisis.
- ✓ Culture of self-management control of the individual results.
- ✓ Understanding, preparation and management of budgets, forecast, financial planning, sensitivities, dashboards, performance indicators and other management tools, per company, per area and per individual.
- ✓ Risk maps management and identification of the opportunities and threats that the business has, as well as the use and care of these.
- ✓ Adequate control of costs, expenses, working capital and CAPEX Identification and management of hidden costs, unforeseen expenses and contingent expenses.
- ✓ Implementation of budget austerity programs culture.
- ✓ Development and implementation of commercial, marketing and logistics strategy, as well as market intelligence plans, competitive analysis and benchmarking.
- ✓ Control of raw materials, inventories and warehouses.
- ✓ Understanding of finance and accounting, without being experts on that.
- ✓ Ideal organizational structure, handling and management of human talent, staff rotation, communication, motivation, recruitment, development plan, succession plan, benefits and training.
- ✓ Compliance and control of tax and legal obligations.
- ✓ Innovation and creativity in the business.
- ✓ Leveraging technology as a competitive advantage.

The content of the third Excellence Model (Professional Excellence Model), will be aimed at guiding professionals along the path of success considering the following:

- ✓ Styles of leadership and management of work teams, according to the circumstances that companies are experiencing at a given time.
- ✓ Establishment of own differential values within organizations.
- ✓ Planning, execution, management and monitoring skills.
- ✓ Management of performance indicators and domain of finance, as well as the understanding of the impact of their decisions and management on the bottom-line Income Statement of the company.
- ✓ Permanent professional and personal growth inside and outside the organizations.
- ✓ Management of rotation, inside and outside of the companies.
- ✓ Strategies for job searching, depending on the personal and professional circumstances of the moment.
- ✓ Decision about business initiatives (entrepreneur life versus employee life).
- ✓ Savings and investment culture, and pension retirement planning.
- ✓ Balance of life and mental health.

- ✓ Management of image, reputation and interpersonal relationships.

The initial filing also included copies of the Petitioner's academic credentials, letters of recommendation, press information, and industry articles and reports in support of his eligibility.

The Director issued a request for evidence (RFE), noting that while the Petitioner's evidence was sufficient to establish that his proposed endeavor has substantial merit and that he is well positioned to advance his proposed endeavor, the record as initially constituted was insufficient to demonstrate that the proposed endeavor had national importance. Specifically, the Director determined that the Petitioner had not thoroughly described the proposed endeavor to establish its national importance or that the proposed endeavor would impact the regional or national population at a level consistent with national importance. As a result, the Director requested a detailed description of the Petitioner's endeavor in order to evaluate his request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner submitted an expert opinion letter, and resubmitted his business plan and letter of intent in support of his eligibility. The Petitioner's counsel also submitted a letter claiming that the Petitioner's proposed endeavor "will make a positive and significant impact on the financial results of companies, and will directly impact economic growth in the United States," as "the stability and growth of small businesses in the United states will stimulate the economy." Counsel further emphasized the Petitioner's professional history and experience, noting that he is uniquely qualified to advance his proposed endeavor.

In denying the petition, the Director determined that the Petitioner had not established the proposed endeavor's national importance, noting that the record contained insufficient evidence to demonstrate that the Petitioner's work would impact the regional or national population at a level consistent with national importance. The Director further noted that the Petitioner did not demonstrate that the benefits of his proposed U.S. consulting company would reach beyond his company and his clients to affect his field or the United States more broadly. The Director further concluded that the record did not satisfy the third *Dhanasar* prong, as required. *See Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner contends that the Director failed to consider his proposed endeavor's broader implications as shown in the business plan, industry reports, and articles, and further contends that the Director did not give due regard to the expert opinion letter submitted in response to the RFE. The Petitioner also asserts, through counsel, that the Director disregarded the evidence submitted, and provides a brief that emphasizes his qualifications as a financial manager and the manner in which his project will impact U.S. companies at a level commensurate with national importance.

For the reasons provided below, we agree with the Director that the Petitioner has not demonstrated the national importance of the proposed endeavor under the first prong of the *Dhanasar* analytical framework.

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 id.* at 889. 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. Further, 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. 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. *Id.* at 893.

The Petitioner contends that the Director did not duly consider certain pieces of evidence, such as his company’s business plan, his work in the field, industry articles and reports, and an expert opinion letter. While we acknowledge the Petitioner’s appellate claims, we nevertheless conclude that the documentation in the record does not sufficiently establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* analytical framework.²

We have reviewed the staffing and revenue projections in the submitted business plan, which project that the Petitioner’s company will directly employ five employees within five years and, during that period, cumulatively pay wages of over \$670,000 and generate over \$1 million in revenue. These employment and revenue projections, however, are not supported by details showing their basis or an explanation of how they will be realized, nor do they demonstrate a significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Specifically, the record does not support that the direct creation of five jobs or the expected revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework.

Moreover, through industry reports and articles, the Petitioner emphasized the importance of financial managers and the financial consulting industry in relation to the welfare and prosperity of U.S. companies and its impact on issues such as the rising national debt and the need to attract Science, Technology, Engineering, or Mathematics (STEM) professionals. We agree that the field of financial management is important, and that success in the field may lead to greater career opportunities and economic advantages. However, 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. 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.* While the Petitioner proposes to work in an important industry or field, this is not necessarily sufficient to establish the national importance of the specific proposed endeavor. Regardless, the articles and reports do not discuss any particulars of the Petitioner’s proposed endeavor or its prospective impact rising to the level of national importance.

We note the Petitioner’s contention that he qualifies for a national interest waiver because he works in a STEM field. The specific STEM evidentiary considerations mentioned by the Petitioner are only applicable where the endeavor concerns critical and emerging technologies or other STEM areas important to U.S. competitiveness and national security.³ There is insufficient information in the

² While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

³ *See generally* 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policymanual>.

record to establish that the Petitioner's endeavor implicates these nationally important areas. Furthermore, working in a STEM field does not exempt petitioners from establishing the national importance of their endeavors. *Id.*

In *Dhanasar*, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Likewise, the Petitioner has not established how providing his financial management consulting services stands to sufficiently extend beyond his clients to impact the field more broadly at a level commensurate with national importance.

We also reviewed the expert opinion letter from a university professor in the accounting field. The author discusses the Petitioner's skills and abilities as a financial manager and speculates on how his services can potentially improve business practices and improve productivity of companies, but does not offer any persuasive detail concerning the Petitioner's proposed endeavor or how his endeavor's impact would extend beyond the companies that he will serve. 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) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable."). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*

The record includes evidence to support the Petitioner's assertion that he has experience in the field of financial management, such as letters of support from former colleagues and business associates that speak to his talents and accomplishments in various aspects of financial management. We note that the Petitioner's experience, however, is not relevant to the first part of the *Dhanasar* framework, but to the second - whether the Petitioner is well positioned to advance the proposed endeavor. Similarly, throughout the record, the Petitioner and his counsel highlight his experience in financial management to establish the national importance of his proposed endeavor. Again, the Petitioner's expertise and record of success in previous positions are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of his proposed work. Neither the letters nor any other evidence within the record provide insight into how the Petitioner's endeavor to initiate a training and consulting platform for the benefit of entrepreneurs and business owners will positively impact the region or the industry beyond any clients to which his singular business will provide services.

The evidence of record does not demonstrate that the endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic benefits for the United States. Consequently, the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, and the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining arguments concerning eligibility under the *Dhanasar* 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of 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.