



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

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

In Re: 29446682

Date: JAN. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established 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, petitioners must demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or as an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. In addition, petitioners must show the merit of 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if:

- 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.

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).

II. ANALYSIS

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner's initial cover letter indicated:

[The Petitioner's] endeavor is to provide structural and hydraulic design services, quality control of materials, and construction practices by developing, managing, and operating his own studio in the State of Florida. [The Petitioner] will manage soil and concrete in his laboratory to ensure the materials comply with all the State requirements and regulations.

His endeavor is intimately aligned with U.S. government initiatives for affordable housing supply. The Petitioner's undertaking will create broad and significant social welfare benefits, generate employment, promote circulation of capital, and contribute to the fiscal coffers through payment of taxes. [The Petitioner] will recruit workers and train them in different activities, such as carpentry, flooring, piping installation, electrical installation, walls, and ceiling among others. His capacity to train others will help broaden the benefits of his project.

In addition, the Petitioner provided a "Proposed Activities in the United States" stating:

. . . [M]y intention is to create a studio that provides structural and hydraulic design services; quality control of materials and good construction practices; so I am setting up a soil and concrete laboratory, certainly complying with all State regulations.

....

. . . I will obtain the necessary licenses to develop construction work in the different Counties and in the State of Florida; In addition to forming a construction company, which provides the aforementioned services, and to complement these I will install a laboratory to perform soil and strength soil and strength studies and testing of building materials within the city of [redacted], Florida, that provides structural design services, quality control of building materials and good construction practices; certainly complying with a state regulations.

In response to the Director's request for evidence, the Petitioner submitted a "Proposed Endeavor Statement" indicating:

My proposed endeavor is to build on my extensive experience with construction, consulting and supervision of civil works, design of projects and execution of very important works, related to road infrastructure, hydrosanitary, hydraulic, structural, topography, soil laboratory and resistance of materials, building, to develop housing construction processes that mitigate the effects of flooding due to the presence of both hurricanes and tropical storms; In addition, the short-term implementation of a laboratory for studies of soils and construction materials in this city, which will allow us to identify

in a timely manner the bearing capacity of the soil and thus be able to apply in the design the loads for the houses; in order to help people to build and focus on caution avoiding the loss of their material goods, this applies to the construction of new homes; As for homes that are already a few years old under construction and that over time no longer meet standards of building codes, we can examine, identify and then be able to apply definitive solutions, such as reinforcing the perimeter of the foundation and raising the level of homes built in low-lying areas and prevent flooding. These technical and practical solutions can be achieved, to reduce costs for the purpose of paying for flood insurance, since improvements have been made in construction to protect against possible risks.

The Director found the Petitioner established the proposed endeavor's substantial merit but not its national importance. Regarding substantial merit, the endeavor's merits may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. On appeal, the Petitioner maintains the national importance of his proposed endeavor.

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. Although the Petitioner emphasizes his submission of evidence "fall[ing] within the aspect of being subject to national initiatives," as well as documentation on a wide range of topics such as real estate, affordable housing, civil engineering, senior housing, infrastructure, and construction, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of his particular services through his business rather than the importance of any of the topics or the industry or the field.² 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 evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. The Petitioner did not offer specific information and evidence to corroborate his assertions that the prospective impact of his proposed endeavor rises to the level of national importance. 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. Here, the record does not show through supporting documentation how his specific services or business would stand to sufficiently extend beyond his prospective clients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. For instance, the Petitioner contends that "the primary benefits lie in the improvements to the overall social fabric of the nation in providing real estate projects for the growing older population." However, the Petitioner did not establish how his services or business would have a broader impact on real estate projects for seniors rather than limited to the projects involving the Petitioner or his business in the Florida area.

² The Petitioner's arguments and evidence relate more to the substantial merit of the proposed endeavor rather than the national importance aspect.

Finally, the Petitioner did not demonstrate how his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although the Petitioner asserts the record “contained ample documentation to corroborate the economic benefits of the Petitioner’s proposed endeavor by and through the personal statements” and [b]oth of these documents contained ample arguments supported by objective documentary evidence to support the assertions therein,” the personal statements do not discuss how his particular endeavor would result in substantial economic benefits. Rather, the personal statements reference overall figures, such as “the real estate sector is projected to amount to US \$37.000bn in 2022.” The Petitioner does not claim or make any arguments relating to how his proposed endeavor would substantially benefit the real estate sector. For all these reasons, the record does not establish that, beyond the limited benefits provided to his prospective clients, the Petitioner’s proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.³

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude he has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

³ 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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).