



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

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

In Re: 29337593

Date: JAN. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur seeking to provide financial services to financial institutions, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *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. *See 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 Director of the Texas Service Center denied the petition, concluding that the record did not establish 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. 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.

Whilst 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 USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest.

A. Substantial Merit and National Importance

The Director denied the petition, concluding that whilst the Petitioner was well positioned to advance their substantially meritorious proposed endeavor, the proposed endeavor was not of national importance such that on balance a waiver of the requirement of a job offer and labor certification would be beneficial to the United States.¹

¹ Whilst we agree with the Director's overall decision that the Petitioner does not qualify for a national interest waiver, we do not agree with and will withdraw for the reasons set forth later in this decision the Director's specific finding that the Petitioner was well positioned to advance their proposed endeavor.

Our authority over USCIS service centers, the office that adjudicated the immigrant petition, is comparable to the relationship between a court of appeals and a district court. So based on a de novo review we will adopt and affirm the Director's decision that the Petitioner did not demonstrate that their proposed endeavor had potential prospective impact rising to a level of national importance. See *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); see also *Prado-Gonzalez v. INS*, 75 F.3d 631, 632 (11th Cir. 1996) (joining "every court of appeals that has considered this issue" holding that an appellate body may affirm the lower court's decision for the reasons set forth therein); *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue").

The Director gave individualized consideration to the evidence the Petitioner submitted with their initial petition and their RFE response.² We agree with the Director that the Petitioner does not qualify for a national interest waiver. 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. The broader implications of the proposed endeavor, national and/or international, can inform us of the proposed endeavor's national importance. That is not to say that the implications are viewed solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. The Petitioner's proposed endeavor would have had them function as an entrepreneur providing financial services to financial institutions. The Petitioner identified the beneficial impact to the national interest of their proposed endeavor through broader benefits to the U.S. economy through optimizing investments, supporting small and medium sized business, improving decision making, improving financial operations, and employment creation. But the record did not adequately demonstrate that these benefits, even if realized, would impact their field beyond the financial institutions utilizing the Petitioner's services or individuals employed in the furtherance of their endeavor.

And we, like the Director, are not persuaded by [redacted] analysis of position requirements for national interest waiver. In the first instance, it is unclear how [redacted] is situated to opine on the national importance of any endeavor, let alone the one the Petitioner proposed. [redacted] background is in the evaluation of academic and experiential qualification of individuals. So naturally the main thrust of [redacted] conclusions regarding the national importance of the Petitioner's endeavor are rooted in the Petitioner's prior professional accomplishments and achievements. For example, [redacted] effusively describes the Petitioner's recognition as a "leader" in their field, their "vast experience," and the skills they "utilize[d]" and "excel[d] in" when concluding that the proposed endeavor has potential positive impacts in boosting economic growth, grow employment, and enhance societal welfare. But [redacted] assertions spotlight their fundamental misunderstanding of the *Dhanasar* framework's first prong. The first prong focuses on "the specific endeavor that the foreign national proposes to undertake" and its potential prospective impact. See *Dhanasar*, 26 I&N Dec. at 889. So what is critical in determining the national importance under

² While we may not discuss every document submitted, we have reviewed and considered each one.

Dhanasar is whether the proposed endeavor has a potential prospective impact with broader implications which rise to the level of national importance. It is not what duties or what occupation the noncitizen will or has filled or performed but the Petitioner's actual plan with their occupation and duties that is examined. [redacted] analysis makes broad conclusions about the proposed endeavor's national importance from the Petitioner's background and achievements. So [redacted] [redacted] analysis is not relevant, material, or probative to determining whether the Petitioner's proposed endeavor is nationally important. USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. See *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). But such statement has less weight when it is not in accord with other information in the record or there is cause to question or doubt the opinion as we see in this matter. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA, 2008).

So we are aligned with the Director's well-reasoned conclusion that the record as it is currently composed does not indicate the proposed endeavor's prospective benefits rose to a level of national importance either through their broader implications influencing matters in the national interest or potential positive economic effects, such as influencing greater employment levels in historically high unemployment areas.

B. Well Positioned to Advance the Proposed Endeavor

We disagree with the Director and hereby withdraw the Director's conclusion that the record established the Petitioner was well-positioned to advance the proposed endeavor under the second prong of the *Dhanasar* framework. In evaluating whether a petitioner is well positioned to advance their proposed endeavor, we review the following and any other relevant factors:

- A petitioner's education, skill, knowledge, and record of success in related or similar efforts;
- A petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing;
- Any progress towards achieving the proposed endeavor; and
- The interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

It is not clear how an individualized consideration of the multifactorial analysis under *Dhanasar's* second prong would demonstrate how well positioned the Petitioner is to advance their proposed endeavor. The record as currently constituted would still not reflect how the Petitioner's prior performance of the duties described in the experience letters is either a similar effort as that of their proposed endeavor or how it constitutes a record of success. Whilst the Petitioner submitted a business plan and an updated business plan describing a plan or model for future activities, the record does not reflect any progress to achieving the proposed endeavor. The establishment of their company alone is not strong evidence of progress. Finally, the recommendation letters the Petitioner submitted are not material, relevant, or probative evidence in the record of interest or support of the endeavor the Petitioner proposed in their petition. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); see also the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of

persuasion). So the evidence in the record does not sufficiently describe how well situated the Petitioner would be to advance their petition's proposed endeavor.

III. CONCLUSION

As the Petitioner has not established that they meet the first or second prong of the *Dhanasar* framework, they have not shown that they are eligible for and otherwise merit a national interest waiver. Consideration of the remaining *Dhanasar* prong would serve no legal purpose so we will reserve this issue. *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). As the Petitioner has not met the requirements of the *Dhanasar* analytical framework, we find that they have not established that they are eligible for or otherwise merit a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.