



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

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

In Re: 29449830

Date: JAN. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and a general and operations manager, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts, or business. 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).

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish eligibility for the EB-2 classification or for a national interest waiver under the *Dhanasar* framework. 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.

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 USCIS may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates that:

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.²

II. ANALYSIS

The Director concluded 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 eligibility for a national interest waiver under the *Dhanasar* framework. While we do not discuss each piece of evidence, we have reviewed and considered each one.

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. *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 "specific endeavor that the foreign national proposes to undertake." *Id.* at 889. In *Dhanasar*, we further noted that "we look for the 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 determined in *Dhanasar* 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. 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 Petitioner's proposed endeavor is to own and manage a Florida based consulting company that provides in-house and outsourced management, management operations, and financial analysis to clients operating in the United States and international markets. The Petitioner further stated the company's services will entail business process outsourcing, management consulting, investment assistance, business incubator, joint-ventures and partnership project development, and system development. The Petitioner contends that his company will create direct and indirect jobs, revenue growth for small and medium-sized businesses, and an increase in paid taxes.

While the Director determined that the proposed endeavor has substantial merit, he concluded that the record did not establish that the proposed endeavor has national importance. On appeal, the Petitioner submits a brief which generally reiterates the benefits of his profession, his qualifications, and the claimed economic impacts of his proposed business and contends that he has established the national importance of his proposed endeavor but does not provide any new evidence or arguments which overcome the Director's determination. The Petitioner also explains that he submitted business agreements entered between the Petitioner's company and clients to further demonstrate his endeavor is of national importance due to its potential to employ U.S. workers and create substantial positive economic effects. While the agreements are supporting evidence of his proposed endeavor, the

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

Petitioner did not sufficiently establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

As it relates to the Petitioner's experience and ability claims, those relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. Moreover, the Petitioner must establish the national importance of his business rather than the importance of consulting, small businesses, entrepreneurship, and immigration.³ 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." *Id.* at 889. Further, "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.* Also, "[a]n endeavor that has particularly 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.

Moreover, 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 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 consulting services 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. Although the Petitioner contends that helping companies maximize profitability will lead those companies to generate revenue and create employment opportunities, this does not rise to the level of national importance. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his consulting clientele to impact his field or U.S. economic and security interests more broadly at a level commensurate with national importance.

The record here includes support letters written on the Petitioner's behalf by his coworkers and individuals that speak highly of his skill, knowledge, and dedication, and illustrate the impact he has had in the consulting industry. However, the support letters and the rest of the record do not document any impact the Petitioner has had or will have on the broader field of consulting beyond his immediate professional circle.

Further, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. We reviewed the Petitioner's business plan. The business plan makes various projections that the company will purportedly achieve in five years, such as paying \$456,822 in taxes to the U.S. government, increasing the sales forecast from \$530,500 in year one to \$3,706,913 by year five, and providing a total payroll of \$2,740,439 by hiring 64 employees. However, the plan does not provide sufficient detail of the basis for these projections, or adequately explain how these sales and staffing targets will be realized. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The business plan alone does

³ The Petitioner's contentions and submissions of industry articles and reports relates to the substantial merit of the proposed endeavor rather than the national importance.

not sufficiently show that the Petitioner's company will have an impact on the consulting industry or the U.S. economy at a level commensurate with national importance. In addition, the record does not indicate that the location of the business and its proposed operations is an economically depressed area. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the third prong of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prong. *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 the 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 his eligibility for a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.