



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

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

In Re: 29547098

Date: JAN. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a systems engineer, 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. 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 initially stated that he intended to work as a principal software engineer/architect for [REDACTED] in the United States, noting that he will “design and develop solutions to complex applications problems, system administration issues, or network concerns,” as well as “perform systems management and integration functions.” The Petitioner also submitted copies of his academic credentials, published materials, industry articles and reports, and letters of recommendation in support of his eligibility.

The Director issued a request for evidence (RFE), noting that the record as initially constituted demonstrated the proposed endeavor’s substantial merit, but was insufficient to demonstrate the proposed endeavor’s national importance. The Director observed that the Petitioner did not provide specific insight as to what he intends to do in the United States or how that endeavor would benefit the regional or national economy, and requested a detailed description of the proposed endeavor so that the Director could evaluate his request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner submitted a personal statement that provided background about his academic and professional achievements. Regarding his proposed endeavor, the Petitioner stated as follows:

Initially, upon approval of my immigrant petition, I intend to work as the principal Software Engineer/Architect for the company [REDACTED] a company that is interested in hiring me as soon as my work permit is approved. However, after concluding a thorough market analysis as well as possibilities to apply my studies and my 18 years of experience in technology, software data, and teaching in several companies, I decided to create my own U.S. company – [REDACTED] – through which I will provide the services that form the basis of my personal endeavor.

I could provide services to [REDACTED] but I will also serve other customer companies. I am providing a full business plan detailing the services that the company will provide,

an explanation of my role at the company and the importance of these services to the U.S., a market analysis, and personnel plan. I intend to directly create employment for 18 employees through my company.

My company will follow three business lines:

- Accompany adopting and adapting sustainability practices for existing applications.
- Co-build the new IT solutions oriented to sustainability as a functional requirement.
- Training IT teams in the best practices in IT sustainability and software quality with customer-centric and environment-friendly approaches.

Therefore, upon approval of my work permit, I will work full-time as CEO/Chief Software Engineer of my company [redacted]

The Petitioner submitted a copy of his business plan, an expert opinion letter, and additional articles and reports in support of his eligibility for a waiver of the job offer.

In denying the petition, the Director pointed out that the Petitioner altered his proposed endeavor in response to the RFE where he was notified that his initial claimed endeavor to work as a systems engineer for [redacted] was not shown to have national importance. The Director observed that in response to the RFE, the Petitioner made a material change to the original endeavor by adding an entrepreneurial element that would involve the Petitioner opening and serving as the CEO and chief software engineer of his own IT services company. We note that in the original supporting statements, the Petitioner described his proposed endeavor as “design[ing] and develop[ing] solutions to complex applications problems, system administration issues, or network concerns” and “perform[ing] systems management and integration functions” and did not include executive duties as a company owner or CEO. It remains unclear whether his proposed endeavor is to secure a job with a U.S. IT company or pursue entrepreneurial aspirations of owning and operating his own company. The Director correctly stated that eligibility must be established at the time of filing and that material changes cannot be considered in determining the Petitioner’s eligibility for a national interest waiver.

Although the Director acknowledged the Petitioner’s submission of an expert opinion letter, which states that systems engineering and IT services have national importance, the Director pointed out that the national importance analysis focuses on the specific endeavor rather than the general analysis of the industry of that endeavor. The Director declined to consider the Petitioner’s new entrepreneurial endeavor presented in response to the RFE, and determined that the Petitioner’s original endeavor was not shown to potentially benefit the regional or national economy in a way that would rise to the level of having national importance. The Director further determined that the Petitioner did not provide corroborating evidence demonstrating that his initial endeavor would result in substantial positive economic effects for the nation.

The Director also acknowledged the Petitioner's submission of industry articles and reports in support of the assertion that IT impacts all sectors of the economy. We acknowledge the Petitioner's assertions regarding software sustainability and the national and global implications such technologies play in the development of many industries. While these articles provide useful background information, they are of limited value in this matter.² Furthermore, 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." *Id.* at 889. Although the Petitioner asserts that his endeavor remains the same regardless of the company for whom he renders his services, he has not established how his individual employment in one or more of the roles identified would affect the U.S. economy more broadly consistent with national importance. The Petitioner has not provided evidence to demonstrate that his work as a systems engineer, whether in the context of his own or someone else's IT company, would result in an impact of regional or national importance or that he would operate on such a scale as to rise to the level of national importance. Specifically, how one systems engineer will trigger substantial positive economic impacts has not been explained.

The Director also recognized support letters submitted in support of the Petitioner's eligibility but determined that such letters lacked any discussion of the proposed endeavor or its national importance and instead focused on the Petitioner's skills and experience, factors that are more relevant to the second prong of being well-positioned to advance the proposed endeavor. Ultimately, the Director determined that the Petitioner's original endeavor to work as a systems engineer for [REDACTED] does not stand to impact the regional or national population and has not been shown to have broader implications for the field of information technology. As such, the Director concluded that the Petitioner's proposed endeavor does not rise to the level of having national importance.³

In addition, the Petitioner contends on appeal that the Director did not give proper consideration to his supporting documentation including his business plan,⁴ letters of recommendation, and the industry reports that were previously submitted. However, as noted above, the Director specifically mentioned the Petitioner's business plan, articles, and recommendation letters, explaining how the evidence falls short of demonstrating the national importance of the proposed endeavor. Further, while the Petitioner stresses his credentials and work experience, which were also highlighted in the recommendation letters, such evidence addresses the Petitioner's knowledge, skills, education, and experience; these

² We further note that the Petitioner's counsel refers to these reports and articles throughout the record, asserting that the IT sector, particularly through software sustainability, impacts the U.S. people and its economy. On appeal, counsel emphasizes the Petitioner's experience in the field and generally asserts that his proposed endeavor will provide crucial IT services to U.S. companies and that such services will have national and global implications. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 534 n.2 (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

³ Despite noting that material changes in the proposed endeavor would not be considered, the Director nevertheless determined that the Petitioner did not demonstrate that his altered endeavor - to own and operate an IT services company - has national importance. Specifically, the Director noted that the business plan was not probative or credible as it appeared incomplete, did not provide details about how the company would be funded, and did not provide specific financial projections.

⁴ We acknowledge the Petitioner's submission of an updated business plan on appeal. Because the Petitioner's proposal to establish and operate this new company occurred after the petition's filing and constitutes a material change to the original proposed endeavor, we decline to consider this additional evidence on appeal. A petitioner must establish eligibility based on the facts and circumstances that existed when the petition was filed. *See* 8 C.F.R. § 103.2(b)(1).

are considerations under *Dhanasar's* second prong, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. Evidence of the Petitioner’s credentials and experience in systems engineering does not demonstrate the national importance of the proposed endeavor or establish that the impact of the endeavor would extend beyond the Petitioner’s clients and prospective employers. In sum, the Petitioner primarily focuses on second prong factors that demonstrate his knowledge and experience.

Lastly, the Petitioner argues that the design and development methodologies he will utilize have implications that go beyond a single entity and will impact the U.S. economy more broadly at a level commensurate with national importance, and it is therefore irrelevant whether he provides such services through [redacted] or another company. As noted by the Director, however, a petitioner must establish eligibility based on the facts and circumstances that existed when the petition was filed. *See* 8 C.F.R. § 103.2(b)(1). A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc Comm’r 1998). As noted in the Director’s denial, after having been issued an RFE where he was notified of various evidentiary deficiencies concerning his original endeavor to work as a systems engineer for [redacted] the Petitioner materially altered that endeavor to include owning and operating his own IT services company. That said, however, the Petitioner offers no compelling arguments explaining how either his original or the altered endeavor’s impact would attain the level of having first prong national importance.

While the Petitioner’s statements reflect his intention to provide valuable IT services for his clients or employers, he has not offered sufficient information and evidence to identify the proposed endeavor with specificity or otherwise demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. Accordingly, we adopt and affirm the Director’s analysis and decision regarding the national importance of the Petitioner’s endeavor. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been “universally accepted by every other circuit that has squarely confronted the issue”); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give “individualized consideration” to the case). Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding his eligibility under the remaining two *Dhanasar* prongs. *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).

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.