



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

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

In Re: 30627808

Date: JUL. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an industrial engineer and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. *See* 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. The Director determined that the Petitioner qualifies for EB-2 classification as an advanced degree professional but did not establish that a discretionary waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. The matter is now before us on appeal pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,<sup>1</sup> grant a national interest waiver if the petitioner demonstrates that:

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<sup>1</sup> *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).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.

*Id.*

## II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The record supports this determination. The Petitioner provided evidence that he attained the foreign equivalent of a bachelor's degree in industrial engineering followed by more than five years of progressive experience in this field. *See* 8 C.F.R. § 204.5(k)(2) (defining "advanced degree"). The remaining issue is whether the Petitioner established that a discretionary waiver of the job offer requirement, and thus of a labor certification, would be in the national interest.

The Petitioner is an industrial engineer with approximately 15 years of technical and commercial management experience in the concrete manufacturing industry in Brazil, most recently as the managing partner of a company that manufactures prefabricated, steel-enforced concrete pipes for infrastructure projects.

In a business plan provided in response to the Director's request for evidence (RFE), the Petitioner indicated his intent to own and operate a Florida-based company and describes the proposed endeavor as follows:

[The Petitioner's company] is a Florida-based enterprise that will be engaged in the manufacturing and wholesaling of drainage flooring (pavers) in pressed/vibrated concrete, in gray color with normal cement and white color with white cement. These blocks, thermic, drainage and anti-slip, are intended to be used mostly around swimming pools and in gardens. [The company] will offer its products to Swimming Pool Builders and Landscape Design Companies. . . . The Company will operate in [ ] which is close to cement mills and stone and sand suppliers . . .<sup>2</sup>

The business plan discusses the advantages of the company's products, the market for such products in Florida, the concrete pipe and block manufacturing industry in the United States, the company's staffing and financial projections for its first five years of operation, and the anticipated economic and industry-related impacts of the proposed endeavor.

The Director determined that the Petitioner established the substantial merit of his proposed endeavor and that he is well-positioned to advance it. However, the Director concluded the Petitioner did not meet his burden to demonstrate the national importance of the proposed endeavor, and that, on balance, it would benefit the United States to waive the job offer requirement as a matter of discretion.

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<sup>2</sup> At the time of filing, the Petitioner did not indicate his intent to operate a manufacturing company in the United States, although the record shows his company was established in Florida in 2019. Rather, in his initial professional plan, he stated that he intended to work with American companies that manufacture equipment in the United States and assist them in opening sales channels to Brazil to increase exports.

On appeal, the Petitioner maintains that the evidence of record is sufficient to demonstrate that he meets all three prongs of the *Dhanasar* framework and otherwise merits a discretionary waiver of the job offer requirement in the national interest.

For the reasons provided below, we agree with the Director's conclusion that the Petitioner did not establish the national importance of his proposed endeavor and therefore did not meet his burden to establish that he is eligible for the requested national interest waiver.

#### A. Substantial Merit and National Importance

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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner submitted media and industry articles and reports that discuss the industrial engineering occupation, the increasing market demand for industrial engineers, shortages of qualified workers in engineering occupations, the manufacturing and construction industries in the United States, and the important contributions of immigrant entrepreneurs to the U.S. economy. Based on this and other relevant evidence, we agree with the Director's determination that the Petitioner's proposed endeavor to own and operate a concrete paver manufacturing company in the United States has substantial merit in one or more areas identified in *Dhanasar*.

On appeal, the Petitioner asserts that the evidence the Director deemed sufficient to demonstrate the substantial merit of his proposed endeavor also establishes its national importance, emphasizing an apparent "contradiction" in the Director's decision. However, in determining national importance, the relevant question is not the importance of the field, 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 Dhanasar*, 26 I&N Dec. at 889. A petitioner may present a proposed endeavor that focuses on an area with significant merit, but still fall short of demonstrating that their specific endeavor has a potential prospective impact in that area that meets the first prong's national importance element. Therefore, the Petitioner's claim that the Director's decision contains contradictory findings with respect to *Dhanasar*'s first prong is unpersuasive.

In *Dhanasar*, we emphasized 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, such as those resulting from certain improved manufacturing processes or medical advances." *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. As noted by the Director in the RFE, USCIS will also consider whether a petitioner demonstrated that their proposed endeavor will broadly enhance societal welfare and whether it impacts a matter that a government entity has described as having national importance or is the subject of national initiatives.

The Director acknowledged the Petitioner's claim that his endeavor would have broader implications for his field by supporting and contributing to the construction and manufacturing sectors in the United States. We note the Petitioner also indicated in his business plan that he will "support the global green movement" by making eco-friendly and sustainable products that protect the natural environment, as well as "transfer and disseminate his own valuable skills and industry-applicable knowledge to the U.S. market" and thus "help create a highly qualified domestic workforce." He further stated that his work will "strengthen the STEM field" and claimed "his planned work [will prove] critical to the country's innovation." The Director concluded, however, that the evidence did not establish how the Petitioner's proposed endeavor would sufficiently extend beyond his company and its clientele to impact his field or industry more broadly, such that it would have "national or even global implications" within the field. *See Dhanasar*, 26 I&N Dec. at 889.

On appeal, the Petitioner emphasizes the ecological features of the low-maintenance concrete drainage pavers he intends to produce and market in the United States and the need for such products in Florida and other regions that have a high concentration of swimming pools and/or similar susceptibility to flooding. He emphasizes that his proposed endeavor will "introduce a stellar product for the U.S. market, while also bringing profound innovation into the building materials industry." He similarly claims that the product will be "unique to the U.S. market and provide a revolutionary solution to an enormous regional and national problem" asserting that the U.S. market demands "uniquely designed, well-engineered building materials suited to adverse weather events." Based on these statements, the Petitioner appears to claim that his endeavor will introduce innovations to his industry comparable to the "improved manufacturing processes" mentioned in *Dhanasar*. *Id.* at 889.

However, the record does not offer adequate support for the Petitioner's claims that his company will offer a "revolutionary solution," a "profound innovation" or a unique product to the U.S. market by manufacturing permeable concrete pavers. For example, his business plan states that many local governments in the United States already offer tax incentives and other benefits "to encourage the use of permeable pavers as a sustainable best management practice." The business plan also includes direct quotations from and links to the websites of other U.S.-based companies that produce and sell permeable pavers for use in swimming pool decks, gardens, and other hardscaping projects, and states that concrete pavers are "the most popular and cost-effective paving material" for these applications. This evidence undermines the Petitioner's claim that he is launching a new or unique concrete paving product. Further, even if the record supported the Petitioner's claim that he offers an innovative solution, he has not described any plans to disseminate his knowledge beyond training his own future staff. His assertion that his operation of a small business in Florida will "help create a highly qualified domestic workforce" in this sector is not sufficiently supported by the record.

The information in the business plan describes the qualities, advantages, and potential uses for permeable concrete paving products, and supports the Petitioner's claim that there is a market for such products in the United States, and particularly in Florida. It also highlights the Petitioner's technical and management skills and his success in a different segment of the concrete manufacturing industry in Brazil. However, for the reasons discussed, the Petitioner has not substantiated his claim that his company's product offerings will introduce new manufacturing processes or other innovations to this segment of the U.S. concrete manufacturing industry, or that his proposed endeavor has other broader implications in his field.

The Petitioner also maintains that his proposed endeavor will have direct benefits for the U.S. economy based on its projected sales revenue, tax contributions, and its direct and indirect creation of jobs. The Director discussed the staffing and financial projections provided in the Petitioner's business plan but concluded that the record did establish that the Petitioner's company has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects commensurate with *Dhanasar*'s national importance requirement.

On appeal, the Petitioner contends that his business plan "extensively and effectively demonstrated how his company will contribute significant job growth, tax revenue and overall benefit to the Florida and U.S. economy." He states that the employment, tax and revenue figures provided in the business plan "will support the U.S. economy incrementally and positively – which is sufficient to determine his proposed endeavor has positive prospective economic effects for the U.S. economy and sufficient to meet the threshold set forth by the *Dhanasar* analysis."

The Petitioner's business plan includes five-year projections, indicating that by year five the company would have 29 employees, pay \$971,513 in payroll expenses, generate \$2.37 million in gross revenue, and pay over \$214,000 in taxes. The plan does not, however, provide sufficient details regarding the basis for these projections, or adequately explain how these staffing and sales targets will be realized. The Petitioner's business plan also incorporates a brief Regional Input-Output Modeling System (RIMS II) analysis, which relies on industry multipliers to predict the company's potential impact on the region in which it intends to operate. According to the business plan, the multipliers for the Concrete Pipe, Brick and Manufacturing industry in Florida indicate that the Petitioner's company will generate "effects on employment equivalent to 88 years in Year 5" and "effects on household earnings equivalent to \$2,336,013 in Year 5" based on the company's anticipated staffing and payroll. However, the business plan does not further elaborate these claims of indirect job creation and is not supported by any independent evidence from the Bureau of Economic Analysis, which publishes the RIMS II multipliers.

Regardless, even if the sales and employment projections and calculations in the business plan were adequately substantiated, the record does not establish that the Petitioner's proposed endeavor has the significant potential to employ U.S. workers, that it will operate in an economically depressed area, or that it would otherwise reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. See 26 I&N Dec. at 889. The Petitioner states that his proposed endeavor will significantly impact the manufacturing industry and "contribute to the expansion of the overall sector." While the revenues and employment opportunities generated by any entrepreneurial endeavor have the potential to positively impact the economy on some level, it is the Petitioner's burden to demonstrate that the potential positive economic effects of his specific endeavor will be "substantial." The record reflects that the U.S. manufacturing industry employed over 12.1 million workers in 2020 and generated revenue of over \$2.3 trillion in 2019. The Petitioner has not established that the creation of 29 additional jobs and generation of over \$2 million in revenue in this sector reaches that threshold.

Overall, the evidence does not sufficiently demonstrate that the proposed endeavor would offer a region or its population a substantial direct economic benefit through employment levels, business activity, or related tax revenue, or associated indirect economic benefits, at a level commensurate with the national importance element of *Dhanasar*'s first prong.

The Petitioner also asserts in his business plan that his proposed endeavor will have national importance by “strengthening the STEM field.” The business plan cites statistics on the importance of science, technology, engineering, and mathematics (STEM) workers to the country’s innovation, and the increasing number of foreign-born STEM workers, and their contributions to the U.S. economy. The business plan states that the Petitioner, as a skilled industrial engineer, “will play an increasingly important role in the U.S. economy at large, with his planned work proving critical to the country’s innovation, while also serving to meet forecast demand for STEM workers nationwide.”

USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies, or other STEM areas important to U.S. competitiveness or national security. *See generally* 6 USCIS Policy Manual F.5(D)(2), <https://www.uscis.gov/policy-manual>. Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. *Id.* However, the fact that a petitioner’s academic qualifications or proposed endeavor fall within a STEM field does not automatically demonstrate eligibility for a national interest waiver. Rather, the specific proposed STEM endeavor must have both substantial merit and national importance with respect to the first prong of *Dhanasar*.

Here, while the Petitioner emphasizes his background in engineering, he has not indicated how his proposed endeavor will “aim to advance STEM technologies and research” or otherwise have sufficiently broad potential implications to demonstrate national importance. As discussed above, the record does not adequately support the Petitioner’s claims that he will be introducing product advancements in his field, disseminating innovative manufacturing processes or techniques, nor does it otherwise support his claims that the proposed endeavor will be “critical to the country’s innovation.” Further, it is unclear how his proposed endeavor, which intends to employ 29 forklift operators, flooring machine operators and helpers, concrete mixer operators, packaging and loading helpers, and sales representatives in Florida, will “meet forecast demand for STEM workers nationwide.” For these reasons, the Petitioner did not demonstrate the national importance of his proposed endeavor based on its alignment with one or more STEM fields.

To further illustrate the potential impact of his proposed endeavor, the Petitioner points to his past employment experience and qualifications as an industrial engineer and business owner in the concrete manufacturing industry. We have reviewed his resume, personal statements, and letters of recommendation from employers and colleagues. While the authors of these letters express their high opinion of the Petitioner and his prior work in the field, they do not discuss his specific proposed endeavor in the United States or explain why it has national importance. As such, the letters are not probative of the Petitioner’s eligibility under the first prong of *Dhanasar*. Furthermore, we note that the Petitioner’s knowledge, skills, education, and experience are considerations under *Dhanasar*’s second prong, which “shifts the focus from the proposed endeavor to the foreign national.” 26 I&N Dec at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of his proposed work.

Finally, we acknowledge that the Petitioner submitted an expert opinion letter from an engineering professor at the [REDACTED], who evaluated his eligibility under the three

prongs of the *Dhanasar* framework. In addressing *Dhanasar*'s first prong, the author significantly focuses on the U.S. market's growing demand for industrial engineers, the importance of the manufacturing sector as a driver of the United States economy, and the importance of trade relations between the United States and Brazil. While the professor indicates that the United States would benefit from the Petitioner's expertise and skills as an engineer and his experience in manufacturing, he does not sufficiently address the Petitioner's specific proposed endeavor, its prospective substantial economic impact, or any broader implications of the Petitioner's work in the field. In fact, the author indicates that the Petitioner's proposed endeavor will involve assisting U.S. companies seeking market opportunities and investments in the manufacturing sector in Brazil, which is not the proposed endeavor described in the Petitioner's business plan.

We observe that 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). 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.*, see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's specific proposed endeavor.

For the reasons provided above, the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of *Dhanasar*. Accordingly, the record does not establish that he merits, as a matter of discretion, the requested national interest waiver.

#### B. Reserved Issue

Our decision regarding the proposed endeavor's national importance resolves this appeal. Accordingly, we need not reach, and thus reserve, the Petitioner's appellate arguments relating to *Dhanasar*'s third prong. See *INS v Bagamashad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); 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. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.