



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

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

In Re: 31260769

Date: JUL. 15, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a civil engineer and project manager, 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 Nebraska 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 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,¹ grant a national interest waiver if the petitioner demonstrates that:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).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

According to the Petitioner’s statement provided with the initial filing, he intends to “contribute to the American economy through the effective and efficient investment and development of real estate industrial and infrastructure projects” and his “goal is to protect American companies that invest or develop projects, maximizing profits through the creation or selection of tools, standardization of processes, efficient management of implementation and diagnosis, and a continuous improvement of good practices in project management.” In support of his eligibility, the Petitioner also submitted recommendation letters, copies of industry articles and reports, and letters from companies expressing interest in working with the Petitioner.

The Director determined, in part, that the Petitioner’s initial filing did not demonstrate the proposed endeavor’s national importance and issued a request for evidence and notice of intent to deny. In response, the Petitioner provided additional documentation, such as a business plan, an expert opinion letter, and additional industry articles and reports. He contended that through his company he will provide “project management consulting services concentrated on the construction and development of industrial, residential building, and infrastructure projects.” The Petitioner stated that his proposed endeavor has national importance because it aims at “empowering organizations in the construction sector to successfully execute construction projects efficiently and profitably through the adoption of project management practices that enhance the organization’s maturity levels”, supports federal government infrastructure initiatives to deliver efficiency and cost reduction within construction projects, and will “help drive economic growth by ensuring the successful completion of projects within budget and on time.” The Petitioner indicated that by establishing his company in Utah, he will also benefit local economies, especially in the economically distressed areas of [REDACTED] and his project management consulting services will focus on the affordable housing construction segment.

In denying the petition, the Director concluded that though his proposed endeavor of project management had substantial merit, the record contained insufficient evidence to demonstrate that the prospective impact of his endeavor rises to the level of national importance. The Director noted that while the submitted evidence emphasized the importance of project managers, it appeared that the benefit of the Petitioner's endeavor would primarily accrue to his future company and prospective clients. The denial indicated that the record did not establish the Petitioner's work has significant potential to provide benefits to the regional or national economy that would reach the level of substantial positive economic effects. Regarding the submitted business plan, the Director found that the record did not clarify how the Petitioner plans to pay salaries for employees and business expenses; the submitted letters indicating interest in working with the Petitioner's company did not contain evidence of financial support; and additional documentation, such as employment contracts and state filing records, was not provided. Therefore, the Petitioner did not meet prong one of *Dhanasar*.

On appeal, the Petitioner claims that the Director did not properly analyze the record as a whole and imposed a novel criterion not mandated by the *Dhanasar* framework. He asserts, in part, that the previously submitted evidence, to include project management and construction industry articles and reports, demonstrates his proposed endeavor meets the national importance element of the first prong of *Dhanasar*. The Petitioner contends the record directly correlates to his "goal to revolutionize project management in key sectors, addressing national challenges and contributing significantly to the U.S. economy and infrastructure development." Concerning the requirement to demonstrate a significant potential to employ U.S. workers or otherwise offer substantial positive economic effects, the Petitioner argues that his plan to hire five workers in five years "is more than enough to meet the plain language of the criterion when coupled with the ample projection-based evidence provided in the record with respect to the likelihood of said employment of U.S. workers." The Petitioner indicates that his business plan demonstrates a commitment to contribute directly to the U.S. workforce, particularly in "areas designated as Historically Underutilized Business Zones (HUB Zones)."

Upon review, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate whether he had demonstrated, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework. 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. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and 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. Although the Petitioner discusses the value and importance of project management, especially in the construction sector, and its impact on the U.S. economy, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession in which the individual will work. *Id.* at 889.

Here, the Petitioner did not demonstrate that his company's operations would provide substantial economic benefits to the region or nation at a level commensurate with national importance, nor did he demonstrate that his company's activities would substantially impact job creation and economic growth, either regionally or nationally. We note the Petitioner's assertion that his plan to hire five

workers in five years meets the requirement to impact job creation. However, as detailed by the Director, the record does not contain sufficient details and supporting evidence to demonstrate how his company will reach the stated economic impact objectives, including in the local HUB Zones; what funds have been committed to pay for potential workers and business expenses; and overall, how his proposed endeavor will substantially impact job creation and economic growth in the region or nation. For instance, while the business plan forecasts total operating expenses to reach over \$1.5 million and total sales to surpass \$1.7 million in the fifth year of operation, the record does not demonstrate sufficient funds invested in the company. Though the evidence includes the Petitioner's personal bank statement reflecting a balance of approximately \$11,000 and a letter from a U.S. company indicating interest in working with the Petitioner, the record lacks documentation establishing investment funds have been secured on behalf of the prospective company.

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make 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 an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.