



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

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

In Re: 31491329

Date: JUL. 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a software developer, 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, 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:

- The proposed endeavor has both substantial merit and national importance;

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).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

According to the Petitioner's statement provided with the initial filing, he intends to "create an IT (information technology) company[;] find a team of professional developers, designers, and marketers to build a strong team[;] create a product or service that is competitive and attractive to consumers[;] find partners and customers to expand" the customer base and increase profits; and "continuously improve products and services, monitor industry changes, and adapt to new trends." The Petitioner stated that his professional background as a software developer as well as his business experience in the IT field, has "significant advantages and national significance for the United States." He plans to open his own hosting company in Wyoming and "continue to create websites" and hire and train new employees. The Petitioner also submitted a business plan, copies of industry articles, and letters of recommendation in support of his eligibility.

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. In response, the Petitioner submitted additional documentation, to include an expert opinion letter discussing the Petitioner's professional skills and his company's prospective contributions to the United States, documents discussing U.S. government initiatives to promote digital technologies and innovation, and an updated personal statement. The Petitioner indicated that the main focus of his company will be the "creation of websites and the strategic implementation of SEO (search engine optimization) technologies in order to provide customized marketing services to client companies that contribute to their successful development in the online environment." He noted that the company will consist of web development, internet marketing, search engine optimization, technical support, and sales customer service departments, and he will initially hire four employees and add five employees annually. The Petitioner contended that his SEO and digital advertising company will play an important role in "strengthening employment and workforce development, promoting innovation and technology, contributing to the economy, promoting business growth, engaging with the local community, improving working conditions and reducing income inequality" in the United States, and "helping minorities and disadvantaged groups in society."

In denying the petition, the Director concluded that though the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate the importance of the Petitioner's endeavor on a national scale. The Director noted that the Petitioner indicated his endeavor relates to the STEM (science, technology, engineering, and math) field and the submitted evidence reflected his professional accomplishments. However, the record did not demonstrate that the potential prospective impact of his endeavor would extend beyond his company and future clients. In addition, the Director found that the evidence did not establish the Petitioner's endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Petitioner did not show that benefits to the regional or national economy resulting from his proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner claims that the Director failed to give due weight to the submitted evidence. He asserts that the record, including the articles, reports, presidential fact sheet, expert opinion letter, and business plan, demonstrates his proposed endeavor of establishing an internet marketing company based in Wyoming will "impact the industry or field more broadly", "reduce shortages of software developers", impact "a matter that a government entity has described as having national importance or is the subject of national initiatives", and will have "substantial positive economic benefits for the U.S."

Upon review, the Director thoroughly 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, Id.* at 889. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. The Petitioner submitted articles and reports addressing the importance of software and web development and its impact on the U.S. economy, and provided recommendation letters and an expert opinion letter, describing his professional experience and accomplishments. However, the Petitioner's skills, expertise, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor he proposes to undertake has national importance under *Dhanasar*'s first prong. Additionally, the articles, reports, and letters failed to establish that the Petitioner's specific endeavor has national implications, significant potential to employ U.S. workers, or otherwise offers substantial positive economic effects for the United States.

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 digital marketing, web development, and assisting businesses in improving their online visibility and reach, *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.

Further, the Petitioner did not demonstrate that his company's operations would provide substantial economic benefits to Wyoming, the region, or the U.S. economy more broadly 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. For example, the Petitioner's business plan projects that his company will have 24 full-time employees during the first five years. In addition, the record does not sufficiently show how the company will pay salaries and other business expenses. The business plan indicates that the "total investment costs of the project" are \$39,000 and "the project is expected to be financed both from the own funds of the project's initiator" and borrowed capital. The business plan lacks evidence showing investment funds from individuals or companies beyond the Petitioner or contractual commitments to work with the proposed company. Therefore, the Petitioner has not demonstrated that his company has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

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.