



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

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

In Re: 30185341

Date: MAR. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is construction manager who seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business, 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 determined that despite qualifying for the underlying EB-2 visa classification as an individual holding an advanced degree¹ and demonstrating that the proposed endeavor has substantial merit and that the Petitioner is well positioned to advance the endeavor, the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Applying the three-prong analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director concluded that the Petitioner did not establish that his endeavor has national importance or that on balance, waiving the job offer requirement would benefit the United States. 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 because the Petitioner did not establish that his specific proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. Because 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 the third *Dhanasar* prong. *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).

¹ The record contains and degree certificate and corresponding transcript showing that the Petitioner completed required coursework and was awarded a bachelor's degree in civil engineering in January 2016 and that he subsequently attained at least five years of progressive experience in his specialty as required by 8 C.F.R. § 204.5(k)(2).

Further, 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).

In addressing the issue of national importance within the context of the Petitioner’s proposed endeavor to own a construction company, the Director addressed industry articles that the Petitioner submitted, noting that the Petitioner did not explain how his endeavor would address the labor shortages highlighted in the articles. The Director also discussed the Petitioner’s business plan and determined that the plan’s staffing and wage projections, which include hiring four employees and paying approximately \$400,000 in wages by the fifth year of operation, do not demonstrate the endeavor’s significant potential for broad economic impact, such as employing or offering economic benefits in an economically depressed area. The Director concluded that the endeavor’s impact would be limited to the company’s clients and would not broadly impact the field of construction and home improvement, broadly enhance societal, or offer substantial positive economic benefits as contemplated in *Matter of Dhanasar*, 26 I&N Dec. at 890.

On appeal, the Petitioner contends that his endeavor “aligns perfectly with the urgent national need for affordable housing and sustainable growth” and claims that he is “well-equipped to employ green building materials and techniques.” However, the Petitioner does not provide evidence to demonstrate that the impact to affordable housing, sustainable growth, or the environment would be so significant as to result in substantial positive effects as contemplated in *Matter of Dhanasar*. Likewise, the Petitioner does not offer evidence to show how his specific endeavor would mitigate the U.S. housing shortage or impact public health at a level that is commensurate with having national importance. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). And while the Petitioner lists multiple other benefits that he claims will be the “indirect economic impact” from his endeavor, he does not provide specific plans, projections, or calculations in support of his broad claims. Nor does he otherwise provide an evidentiary basis to demonstrate that his work will, for example, prompt job creation and growth of small businesses. While any business activity has the potential to positively impact the economy, the record does not demonstrate how the Petitioner’s construction company could generate such significant economic activity that it would rise to the level of “substantial positive economic effects.” *Matter of Dhanasar*, 26 I&N Dec. at 890.

In sum, the Petitioner has not established that his proposed endeavor rises to the level of national importance. As noted above, we reserve the Petitioner’s appellate arguments regarding the remaining *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. at 25.

ORDER: The appeal is dismissed.