



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

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

In Re: 30371569

Date: MAR. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the real estate and construction business, 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 the record did not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish 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;
- 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

A. EB-2 Classification

The Director did not address the Petitioner’s eligibility for the underlying EB-2 visa classification in her decision. However, the Director concluded in the request for evidence that the Petitioner qualifies for the EB-2 classification based on evidence of his education. The record contains evidence that the Petitioner obtained the degree “Bachelor of Business Administration” in 2007 from [REDACTED] [REDACTED] in Brazil, and an academic evaluation that states that he has the foreign equivalent of a bachelor’s degree. The Director did not discuss whether the Petitioner satisfied the requirement for five years of progressive experience. However, as the record does not establish by a preponderance of the evidence that the Petitioner is eligible for a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner’s eligibility for the EB-2 classification.²

B. National Interest Waiver

1. Substantial Merit

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. The Petitioner proposes to direct and oversee operations of a Florida-based construction and real estate company with a primary focus on building reasonably priced homes for clients. The business plan states he will provide various services related to the construction and real estate industries including new construction, renovation and remodeling, real estate sales, property development, construction consulting, and property inspection. He discusses and submits documentation about the importance of small businesses to the U.S. economy. He submits documentation regarding the Biden Administration’s plan for protecting the environment and how he will use clean, sustainable resources in his company. He also discusses the importance of affordable housing to societal welfare. We conclude that the record shows the Petitioner’s proposed endeavor has substantial merit.

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).

² See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory 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).

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar* 26 I&N Dec. at 889. The Director analyzed the evidence in the record and found that much of the evidence supported the importance of the field of construction and real estate, however it, “lacked sufficient evidence to show that the proposed endeavor has prospective national importance.” On appeal, the Petitioner asserts that the evidence and material facts were not fairly and accurately considered and were interpreted incorrectly. In reviewing the entire record, we conclude that the record does not establish that the Petitioner’s proposed endeavor is of national importance.

The Petitioner asserts on appeal that his proposed endeavor will address the “National Affordable Homes Crisis.” He explains that there is a deficit of affordable homes and an immediate need to produce additional housing. However, the Petitioner has not established that his proposed endeavor stands to broadly impact or significantly reduce the crisis. Although his proposed endeavor would create additional homes, the record does not specifically show how the Petitioner’s construction and real estate company will meet his goals of affordable housing or how the Petitioner will address or impact these issues in a manner that rises to the level of national importance.

The Petitioner states that his company will create a significant number of direct and indirect employment opportunities in construction and real estate. *Dhanasar* states that an endeavor can have national importance if it may also have “significant potential to employ U.S. workers” or “other substantial positive economic effects, particularly in an economically depressed area.” *Id* at 890. The Petitioner states on appeal that his proposed endeavor will create 7 direct jobs in the first year of operation and 11 jobs by the fifth year. It also states that indirectly, he will be creating 30 to 33 jobs per new home being built. However, in the business plan initially submitted with the petition, the Petitioner states that he will have 3 employees in the first year of operation and 8 employees by the fifth year and that there will be 44 indirect jobs created based on industry calculations. The record contains conflicting information, however, either way, the proposed number of jobs do not rise to the level of national importance. Specifically, he has not shown that his company’s future staffing levels, direct or indirect, and volume of activity stand to provide substantial economic benefits in Florida or the United States.

The Petitioner also asserts his proposed endeavor will contribute to wealth-building among the local residents and attract a diverse workforce for economic growth and sustainability of the region and that affordable housing has substantial social benefits. While this is meritorious, and the proposed endeavor has the potential to positively impact his clients in these ways, the record does not establish that the proposed endeavor will impact the construction and real estate industry in a broader sense, impacting more than just the Petitioner’s client base. Similarly, in *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

Finally, the Petitioner claims that his proposed endeavor has the potential to produce “ripple effects” as, “[r]eplicating his strategies and methodologies is a likely and intended consequence of the endeavor. . . .” *Dhanasar* states that a proposed endeavor may have national importance because it has “national or even global implications within a particular field, such as certain improved

manufacturing processes or medical advances" *Dhanasar* at 889. Here, the record does not quantify any "ripple effects" that would be directly attributable to his endeavor or elaborate on how the endeavor will cause such effects, beyond operating as a construction and real estate business. The business plan discusses his proposed endeavor and that he could create affordable housing using clean, sustainable materials, however there is nothing in the record to show this method is specific to the Petitioner or that he has a plan to promote his strategies and methodologies in a way that would benefit more than his client base.

The Petitioner asks that we address the evidence that discusses the current administration's position on the importance of small businesses and affordable housing. While we acknowledge the importance of the industry the Petitioner proposes to work in, 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 specific endeavor that the foreign national proposes to undertake." *Id.* The record contains industry articles and reports of the importance of the small business and affordable housing industry. Here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of his proposed endeavor. Although this evidence provides good background information on the industry itself, without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

In addition, the Petitioner asks that we address the evidence submitted that shows the Petitioner's progress towards his endeavor. This evidence has been reviewed and is more appropriate for prong two analysis, whether the Petitioner is well positioned to advance the proposed endeavor, but does not demonstrate his proposed endeavor's national importance. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.