



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

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

In Re: 30210456

Date: MAY. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a wholesale and retail food distributor, 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 established his eligibility for EB-2 classification as a member of the professions holding an advanced degree, he did not demonstrate 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 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. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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.²

II. ANALYSIS

According to the Petitioner’s resume, he worked as a national sales manager with [REDACTED] a business specializing in the production, commercialization, and distribution of dairy products, from 2009 until 2022. The Petitioner entered the United States in May 2022 as a B-2 nonimmigrant visitor for pleasure and filed this petition in August 2022. The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.³ Therefore, the sole issue before us is whether the record establishes that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest.

Although the Director found substantial merit in the proposed endeavor, and that the Petitioner is well-positioned to advance it, the Director concluded that the Petitioner did not establish that his proposed endeavor has national importance and that, on balance, waiving the job offer requirement would be beneficial to the United States. For the reasons provided below, we conclude that the Petitioner has not established the national importance of his proposed endeavor and therefore is not eligible for a national interest waiver as a matter of discretion.

A. The Proposed Endeavor

The Petitioner did not identify his proposed occupation on the Form I-140, Immigrant Petition for Alien Workers. At the time of filing, the Petitioner submitted a “Personal Statement” in which he indicated that his plan is to establish a company in California “dedicated to the commercialization of food products, which at the beginning would be fruits and vegetables.” The proposed endeavor would require his investment “in refrigeration and transportation equipment necessary to be able to market the product and have it delivered to the final customer, either directly in central food depots, self-service stores, or home deliveries.” He indicated that “[o]nce the business is established, essential products such as dairy products, cold meats or specific products required by Clients can be added.” The Petitioner’s personal statement also provided:

My role in the company would be General or Regional Manager. This position would have the following responsibilities:

¹ See also *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 *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner provided an official academic record documenting his completion of a master of business administration at a Mexican university, along with an educational evaluation indicating that this foreign degree is equivalent to a U.S. master’s degree in the same field. See 8 C.F.R. § 204.5(k)(2) (defining “advanced degree”).

- Development of the Work Plan or Project until its implementation and operation.
- Management of procedures and permits required for the establishment and start-up of the business.
- Location and contracting of a warehouse and business premises to operate.
- Leasing of delivery equipment for the distribution of products.
- Direct dealings with Accountants and Lawyers.
- Recruitment and training of personnel.

Further, the personal statement indicated that “approximately 8 to 12 months after the start of the company’s operation, we will have at least 10 collaborators” in the positions of administrator; shop manager; warehouse manager; delivery supervisor; pre-sales agent, delivery drivers; and general helpers.

In response to the Director’s request for evidence (RFE), the Petitioner submitted a “National Importance Statement,” in which he indicated that his company will be of major importance because it will: strengthen and enhance supply chain and logistics in the fruits and vegetables industry in the U.S.; create new job opportunities; work closely with local and regional growers and producers strengthening their economies by marketing and distributing their products; deliver healthy food to the community to avoid health risk related with obesity; and create new job opportunities for employees, collaborators, suppliers, and service providers which will contribute to the economic growth of the region and, consequently, of the country. The Petitioner’s RFE response also included a “Proposed Endeavor Statement,” in which he provided that his wholesale/retail fruits and vegetables distribution company “will ensure the flow of sales of small local producers’ products, while expanding consumer choices and promoting healthy consumption habits.”

B. Substantial Merit and National Importance

To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that his proposed endeavor has both substantial merit and national importance. This prong of the *Dhanasar* framework focuses on the specific endeavor 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. As stated, the Director concluded that the Petitioner established that his proposed endeavor has substantial merit but determined he did not meet his burden to establish the national importance of the endeavor.

As noted, the Petitioner’s National Importance Statement emphasizes the role that the fruits and vegetables industry can play in addressing the high level of obesity in the United States. In support of his claim that the proposed endeavor has national importance consistent with the first prong of the *Dhanasar* framework, the Petitioner provided published articles and reports, including from the Center for Disease Control and Prevention, addressing obesity-related health concerns. We do not question the significance of these issues and their direct bearing on public health in the United States. Further, the Petitioner provided copies of articles and reports from business, industry, and government publications, including from the U.S. Department of Agriculture, discussing importance to the U.S. agricultural and food sector of a food system that is fair, competitive, and resilient. Here, the Director

concluded that the submitted articles and government reports establish the Petitioner's endeavor has substantial merit.

When determining national importance, however, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor. In *Dhanasar*, we further noted 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." *Id.*

Specifically, the Director determined that the Petitioner had not shown how his proposed endeavor would have broader implications within his field that would reach beyond clients utilizing his services, or that it would broadly enhance societal welfare. In this regard, the Director observed that the Petitioner's claims that the proposed endeavor would contribute to U.S. food distribution efforts and access to nutritional foods did not appear to extend beyond his clients and customers to demonstrate the national importance of his endeavor. The Director further observed that the record did not demonstrate that the proposed endeavor has significant potential to employ U.S. workers, would impact an economically depressed area, or would have benefits to the regional or national economy that would reach the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner maintains that the Director did not give due regard to his initial and updated personal statements regarding his proposed endeavor and industry reports and articles demonstrating its national importance. For the reasons provided below, we agree with the Director's determination that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework. We have considered evidence related to the Petitioner's proposed activities as a wholesale and retail distributor of fruits and vegetables.⁴ The Petitioner has not shown how the food distribution services he intends to provide would have broader implications in the field of fruit and vegetable distribution.

The Petitioner maintains on appeal that he provided evidence that the services offered by his proposed business will have an impact on "improvements to the overall social fabric of the nation in expanding consumer choices and promoting healthy consumption habits," matters that are the subject of national initiatives by the U.S. government. USCIS will consider evidence demonstrating how a specific proposed endeavor impacts a matter that a government entity has described as having national importance or a matter that is the subject of national initiatives.

Again, in determining national importance, the relevant question is not the importance of the industry 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. Therefore, pursuing employment or operating a business in an area that is adjacent to or aligned with the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. Here, the Petitioner has not sufficiently explained the potential prospective impact or broader potential

⁴ While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

implications of his specific endeavor on the referenced food distribution and healthy consumption initiatives.

The Petitioner further contends on appeal that he has submitted “ample documentation to corroborate the economic benefits of [his] proposed endeavor by and through the personal statements submitted with the initial petition and the RFE response.” However, these statements are not supported by financial projections. The record lacks evidence that the proposed endeavor’s future staffing levels and business activity would provide substantial economic benefits in California or in the United States, or that it otherwise has broader national implications within the field. Without this evidence, we cannot evaluate the proposed endeavor’s impact on job creation or its overall economic impact.

As such, the Petitioner has not supported a claim that his proposed endeavor is likely to, for example, introduce innovations that may have broader implications in the fruit and vegetable distribution field. Although the proposed endeavor may benefit the client companies and consumers that engage the Petitioner’s services, the record does not sufficiently show that such benefits, either individually or cumulatively, would rise to the level of national importance. 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. The record does not provide adequate support for a determination that his specific proposed endeavor will have such a wide-reaching impact.

We also stated in *Dhanasar* 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. Here, the Petitioner has not offered sufficient evidence identifying the area where his company will operate; that it is economically depressed; that his company would employ a significant population of workers in that area; or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity.

Moreover, in his personal statements and appellate brief, the Petitioner emphasized his professional experience in the field. The record also contains recommendation letters from his former clients in Mexico. While important, the Petitioner’s expertise acquired through his academic and professional career primarily relates to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar*’s first prong. A determination regarding the claimed national importance of a specific proposed endeavor cannot be inferred based on the Petitioner’s past accomplishments, just as it cannot be inferred based on general claims about the importance of a given field or industry.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from C-D-S-, a business consultant. Much of the letter discusses the Petitioner’s work experience as a national sales manager for [REDACTED]. The letter concludes that the Petitioner “is a highly qualified professional in supply chain, logistics, product development and sales within the food industry whose commitment to continuous improvement will serve the U.S. economically by supporting the local economy and producers and also socially by contributing and giving access to the healthy products to the community.” However, the author does not indicate how the Petitioner’s business plan supports a

determination that the proposed endeavor has significant potential to employ U.S. workers or has other substantial positive economic effects, or how it has national implications within field.

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 proposed endeavor.

In light of the above conclusions, the Petitioner has not met his burden of proof to establish that he meets the first prong of the *Dhanasar* national interest framework. Because the Petitioner has not established his proposed endeavor has national importance, he is not eligible for a national interest waiver under the *Dhanasar* analytical framework. Since 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 his eligibility under 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).

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.

ORDER: The appeal is dismissed.