



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

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

In Re: 30559988

Date: MAY 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as individual of exceptional ability, 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 Petitioner had not established he qualified for EB-2 classification, and that 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 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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.<sup>1</sup> 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 (AAO 2016), provides the framework

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<sup>1</sup> Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,<sup>2</sup> 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.

*Id.* at 889.

## II. ANALYSIS

### A. Substantial Merit and National Importance of the Proposed Endeavor

The first *Dhanasar* 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. *Id.* The term “endeavor” is more specific than the general occupation; thus, a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), <https://www.uscis.gov/policy-manual>.

Because *Dhanasar*’s first prong focuses on the specific endeavor that the foreign national proposes to undertake and its “potential prospective impact,” we will first identify the Petitioner’s endeavor as shown in the record and then, we will evaluate the Petitioner’s evidence in support of the endeavor’s substantial merit and national importance. *See id.* at 889.

The Petitioner’s proposed endeavor is to create a company, to be located in Florida, for which he will serve in the position of international purchasing director and business development coordinator. The Petitioner’s company will provide the following services: importation of personal protective equipment (PPE), including face masks, gloves, eye protection, respirators, and body protection, from Latin America for distribution into the U.S. market; identify manufacturers and suppliers in Latin American via ground, air, and sea transportation to the United States and ensure final delivery to wholesalers and healthcare facilities; customer service through a mobile-ready, digital platform that allows clients to monitor shipments in real-time and provides for the virtual storage of documents and reports; and logistics consulting services including renting warehouse space to customers. Based on the Petitioner’s description, we agree with the Director’s conclusion that the proposed endeavor has substantial merit. Because the endeavor has substantial merit, we turn to whether the proposed endeavor is of national importance, as contemplated by *Dhanasar*.

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<sup>2</sup> *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).

With his initial petition, the Petitioner asserts the national importance of his endeavor is that he will operate a business, and create jobs and income, which in turn will increase tax revenue. Furthermore, he asserts his endeavor is also of national importance because it will reduce America's reliance on China for sourcing medical supplies, increase the United States' preparedness for the next potential pandemic by ensuring there is no shortage of PPE, reducing infection rates and increasing American resilience to infection which would increase overall health, and productivity because Americans would be sick less often.

On appeal, the Petitioner asserts that his endeavor extends beyond his company due to the growing importance of international trade, the importance of PPE, and the jobs he will create. Furthermore, he asserts that beyond job creation, his endeavor will benefit the United States by enhancing trade with Latin America. He cites to the "substantial evidence [] submitted to show the state of international trade, the importance of PPE . . . and the effect of job creation," which includes two business plans,<sup>3</sup> a letter from a plastic surgeon, and several news articles discussing these topics, which he maintains establish the national importance of his endeavor.

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." *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance . . . , because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* We also stated 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 must demonstrate the national importance of his company's services rather than the national importance of the fields of entrepreneurship, international trade, or PPE used by health care providers.

At the outset, we acknowledge the Petitioner's arguments in his response to the Director's request for evidence, which noted that his endeavor promotes entrepreneurship, job creation, as well as the importance of PPE (particularly during pandemic times, when demand is higher than supply), and the United States trade deficit with China. He points out that his business success in Colombia, and large business network make him perfectly suited to the enhance the United States trade relationships in Latin America, which is of national importance. However, while these arguments establish the substantial merit of the Petitioner's endeavor, they do not establish its national importance. Furthermore, his prior success in business is the focus of *Dhanasar's* second prong, when we would examine whether he is well-positioned to advance the proposed endeavor. *Id.* at 890. As such, the Petitioner has failed to establish that his endeavor would have broader national or global implications within his field.

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<sup>3</sup> The Director's decision noted that because the Petitioner submitted a second business plan in response to the request for evidence, which postdates the filing of his petition, the second business plan would not be considered. On appeal, the Petitioner asserts that his new business plan was updated to include "changing forecasts, which is common, as business plans and prospective outcomes are not stagnant by nature." Because our decision is based on one dispositive issue, namely the national importance of his proposed endeavor, we have considered the national importance arguments found in both business plans.

The Petitioner's evidence of national importance includes a letter from a reconstructive plastic surgeon in Colombia, who asserts that during the COVID-19 pandemic, the United States' trade deficit reached \$948.1 billion, and there was a reshuffling of global supply chains due to barriers to trade with China. The writer also explains that import and export activities are important to the United States economy because "40 million American jobs depend on trade." She asserts that the Petitioner's endeavor is of national importance because he will be essential to "bridge this gap."<sup>4</sup> Her letter also points to how a low supply of PPE led to people dying due to a lack of masks and respirators, and doctors who lacked basic supplies, like gloves, paper towels, and food, which she asserts his endeavor would help prevent. Her letter also quotes the U.S. Chamber of Commerce's information regarding the importance of imports to lower prices and companies' reliance on imports for raw materials, which will create jobs in "transportation, retail, shipping, among others . . ." While the letter highlights how the Petitioner's endeavor might be situated within important fields and industries, it does not offer insight into or specify how the endeavor will have an impact rising to a level of national importance. It is not the field or industry but the endeavor itself that the individual will carry out that must be shown to be of national importance. Therefore, because of these deficiencies, the opinion does not help to establish the national importance of the Petitioner's proposed endeavor. See *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (standing for the proposition that we may, in our discretion, use opinion statements submitted by a petitioner as advisory but, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that opinion); see also *Matter of Chawathe*, 25 I&N Dec. at 375-76 (standing for the proposition that a petitioner must support their assertions with relevant, probative, and credible evidence).

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. *Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner's business plans reflect his intention to provide a variety of services related to importation and exportation of PPE goods, he has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. The Petitioner's business plans, and submitted articles do not speak to or establish how his specific endeavor will affect the field of international trade more broadly or impact our reliance on foreign manufacturers of PPE at a level commensurate with national importance. Overall, his evidence does not explain how his services will have "broader implications" on America's standing in international trade. 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. Similarly, here, the record does not establish the Petitioner's proposed endeavor stands to sufficiently extend beyond potential users of his PPE to impact international trade or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. We acknowledge that his business plans project three initial jobs in the first two years to be expanded to five direct jobs by its fourth year of operation to include his position, a sales and

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<sup>4</sup> We note that the Director only considered this letter with respect to whether the Petitioner established his eligibility for EB-2 classification, however, on appeal, the Petitioner reasserts that the importance of PPE and international trade are significant factors we should consider in our analysis of his endeavor's national importance. As such, we consider this evidence here.

pricing manager/consultant, a logistics specialist, sales representative, and junior consultant position. However, the business plans do not sufficiently detail the basis for the revenue and staffing projections, nor do they adequately explain how the revenue and staffing projections will be realized. *Matter of Chawathe*, 25 I&N Dec. at 376. Furthermore, while we acknowledge his assertion that his business will generate close to \$700,000 in revenue by its fifth year of operation, this revenue and corresponding tax payments are insufficient, without more, to establish that his endeavor will have substantial positive economic effects at a level commensurate with national importance. Moreover, with respect to the positions he will create, the business plan contains inconsistencies that are not sufficiently explained in the record. In a section titled “Job creation,” the Petitioner explains that he will create five new jobs that will be high-skilled and well-paid, and he specifically identifies software engineering and product development as examples of the types of jobs his endeavor will create. However, as explained above, none of the jobs he later identifies as part of his endeavor’s growth include software developer or product development. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (standing for the proposition that any inconsistencies in a petitioner’s evidence may lead to reevaluation of the remaining evidence offered in support of the visa petition.) As such, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s endeavor would reach the level of “substantial positive economic effects” contemplated in *Dhanasar*. *Id.* at 890.

Accordingly, the Petitioner’s proposed endeavor does not meet the first prong of the *Dhanasar* framework because he has not established its national importance.

#### B. EB-2 Classification and *Dhanasar*’s Second and Third Prongs

As the Petitioner has not established the national importance of his proposed endeavor, we decline to reach and hereby reserve the Petitioner’s arguments regarding his eligibility for EB-2 classification and the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that “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 demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.