



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

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

In Re: 30632019

Date: MAY 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

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. 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. 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.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration

Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner proposes to work in the United States as an entrepreneur by developing and expanding his business, [REDACTED]. The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the *Dhanasar* analytical framework's first prong.

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 to be discretionary in nature).

The Director acknowledged that the Petitioner's proposed endeavor has substantial merit. The Director determined, however, that the Petitioner did not establish the proposed endeavor is of national importance, that he is well-positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner argues that the Director erroneously denied the petition and imposed novel substantive and evidentiary requirements. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

As previously noted, the first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

In the Form I-140, the Petitioner listed his occupation as a sales manager. With respect to the Petitioner's proposed endeavor, the Petitioner initially stated that he intends to work in the United States as a sales manager and customer service specialist for a retail store market. The Petitioner subsequently mentioned that his proposed endeavor involves operating his business, a management consulting firm that focuses on providing advisory services related to business development.

In denying the petition, the Director concluded that the submitted evidence was insufficient to demonstrate that the Petitioner's proposed endeavor has national or even global implications. The Director also determined that the Petitioner did not establish his proposed endeavor would broadly enhance societal welfare or cultural or artistic enrichment, would lead to the employment of a significant population of workers in an economically depressed area, or that the Petitioner would pursue his endeavor in economically depressed area. Furthermore, the Director found the record was insufficient to demonstrate that the Petitioner would operate his proposed endeavor on such a large scale to impact the U.S. economy.

On appeal, the Petitioner contends that he submitted sufficient evidence to demonstrate that his proposed endeavor is of national importance. The Petitioner highlights the evidence he submitted in support of his petition and in response to the Director's request for evidence including the definitive statement, letters of recommendation, and industry report and articles to underscore the sufficiency of the submitted evidence and maintains that he submitted evidence to demonstrate the proposed endeavor's national importance. The Petitioner also submits letters indicating interest in working with his company.

The expert opinion letter's author discusses the Petitioner's education and professional experience, as well as the economy of Brazil. The author asserts that the Petitioner possesses an intimate knowledge of the business environment in Brazil and emphasizes the value of the Petitioner's expertise in the field. The author claims that the Petitioner's expertise in the field is of substantial merit and national importance and states that the Petitioner will no doubt work in the United States in an area of substantial merit and national importance. Although an individual's experience, qualifications, contributions, and achievements are material, they are misplaced in the context of the first *Dhanasar* prong. The Petitioner's extensive experiences are material to *Dhanasar*'s second prong—whether an individual is well positioned to advance a proposed endeavor—but they are immaterial to the first

Dhanasar prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of the Petitioner’s work. While the Petitioner claims that he will create jobs and promote U.S. societal welfare through the development of his entrepreneurial endeavor and that by year five his company will offer 16 direct jobs and garner net income of \$1,518,738, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises 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. Here, the record does not include adequate corroborating evidence, to show that the Petitioner’s specific proposed work as an entrepreneur in the field of management consulting offers broader implications in his field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance.

Though we acknowledge the Petitioner’s assertions and the evidence he submits on appeal, we conclude that the Petitioner has not shown his proposed endeavor stands to sufficiently extend beyond the individuals and companies he elects to work with to enhance societal welfare on a broader scale indicative of national importance.

The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that his specific endeavor has national importance under *Dhanasar*’s first prong. The Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. Specifically, the Petitioner has not demonstrated that his specific endeavor stands to provide substantial economic benefits in the United States. The Petitioner claims that his proposed endeavor not only generates revenue for private companies and individuals but also actively creates economic bridges, promotes business development, and shapes and improves the functionality and monetary output of the country’s economy and its workforce. The record does not nonetheless support the Petitioner’s general assertions with corroborating evidence demonstrating the plausibility of those assertions.

The Petitioner’s appellate submission introduces inconsistency into the record, which undermines his claim. We acknowledge his argument that his proposed endeavor is of national importance because his endeavor will generate “substantial ripple effects upon security training and business activities on behalf of the United States.” However, his evidence raises questions regarding the endeavor’s actual nature. For example, he describes the endeavor as “running [redacted] to provide services related to property management and rental. The property management and rental industry has an important [role] in the American economy and job creation.” This is not consistent with his earlier description. The Petitioner’s various descriptions of his proposed endeavor raise doubts about the sufficiency of the submitted evidence in demonstrating the national importance of the Petitioner’s proposed endeavor. Regardless, the record does not establish how the proposed endeavor will have broader implications beyond benefitting the Petitioner’s customers. As previously mentioned, 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 “the specific endeavor that the

foreign national proposes to undertake.” *Id.* at 889. Here, the Petitioner has not sufficiently explained how he will positively impact the U.S. economy and create direct and indirect jobs to move the U.S. economy on a broad scale rising to the level of national importance. Without evidence projecting U.S. economic impact or job creation attributable to the Petitioner’s proposed endeavor, it is insufficient to assert that the benefits to the U.S. regional or national economy resulting from the proposed endeavor would rise to the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner reiterates that his proposed endeavor is of national importance because his professional activities relate to a matter of national importance. The Petitioner must nonetheless demonstrate his specific proposed endeavor of working as an entrepreneur rather than the importance of the national initiatives and interests, industries, or fields. He has not done so.

It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For the aforementioned reasons, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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 *Dhanasar* analytical framework’s requisite first prong, we conclude that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.