



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

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

In Re: 30624492

Date: MAY. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, 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 the Petitioner's eligibility for the requested national interest waiver. 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. 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, however, a doctoral degree is customarily required by the profession, a noncitizen must have a United States doctorate or a foreign equivalent degree. *Id.*

Once 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 discretion¹, 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

The Director determined the Petitioner qualified as an advanced degree professional, but that he did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not met the *Dhanasar* framework and we will dismiss the appeal.

With respect to his proposed endeavor, the Petitioner’s business plan indicated that he started a company that provides services in civil engineering, construction management, and sustainability consulting services, and would “infuse in the community groundbreaking products and services, leveraging the most cutting-edge technology.” The business plan also noted the company specializes in the development of industrial plants and construction projects that will cater to diverse clientele, including corporate entities, real estate developers, builders, and individual clients. Further, the plan stated the company is committed to sustainability, environmental stewardship, and promoting projects that incorporate renewable energy and sustainable practices.

In the decision denying the petition, the Director determined that the Petitioner had not established neither the substantial merit nor the national importance of his proposed endeavor. The Director stated that the Petitioner did not demonstrate that his undertaking will have a broader impact on the field outside of his prospective company and/or clients. The Director also indicated that the Petitioner had not shown his proposed work has broader implications in the field, significant potential to employ U.S. workers, or other substantial positive economic effects.

On appeal, the Petitioner vaguely asserts that the Director did not apply the correct burden of proof and failed to properly consider the evidence establishing his credentials and experience in the field. An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v). Although the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not specify, as required, how the Director erred or what factors in the decision were erroneous. In addition, the Petitioner does not directly address the Director’s conclusions regarding the limited prospective impact of his endeavor, and simply maintains that the evidence on record is sufficient to demonstrate that he meets all three prongs under the *Dhanasar* framework.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is “more likely than not” or “probably” true. *Matter of Chawathe*, 25

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 to be discretionary in nature).

I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989).

Regarding the substantial merit of the proposed endeavor, the record includes documentation with cited sources of how the U.S. construction industry is fundamental to the U.S. economy, and the need for more construction managers in the United States. The Petitioner stated his company will provide construction management services with a commitment in sustainability and environmental stewardship to work with clients to create business solutions and sound recommendations to help expand the operations of clients and/or companies and create new jobs in the United States. The proposed endeavor has substantial merit and we will withdraw the Director’s conclusion on this issue alone. Although the Petitioner’s proposed endeavor has substantial merit, the record does not establish that the endeavor rises to the level of national importance as contemplated in *Dhanasar*.

In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on “the specific endeavor that the foreign national proposes to undertake.” *Dhanasar* at 889. We therefore “look for broader implications” of the proposed endeavor, noting that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *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.

In support of his endeavor, the record contains, among other things, a definitive statement, a resume, a five-year business plan, and letters of recognition as to his professionalism and expertise in construction management. The Petitioner also provided articles and industry reports discussing the construction field in the United States, including an anticipated labor shortage of construction workers.² The Petitioner reiterates on appeal his proposed work is of national importance because his occupation of civil engineering in the construction industry stand to broadly enhance society welfare, offer significant potential to employ U.S. workers, provide substantial positive economic effects, and have national or even global implications in the field. The Petitioner provided very general notions of national impacts but did not provide specific information on how his business that services clients and specific companies in a certain area can actually have a national impact. The record does not include adequate corroborating evidence to show that the Petitioner’s specific proposed work in entrepreneurship and construction management offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance. In addition, while the Petitioner states that his endeavor would address the shortage of professionals in his field, he does not explain *how* his employment as a civil engineer would impact this shortage besides hiring individuals to work for his company. As such, a claimed shortage of professionals alone is not sufficient to establish the national importance of an endeavor.

² We do not discuss each piece of evidence contained in the record individually, but we have reviewed and considered each one.

Likewise, the Petitioner's reliance on the importance of the construction field, the shortages of construction workers in the United States, and the benefit of entrepreneurship and business development in general to assert the national importance of his endeavor is misplaced. As previously discussed, when evaluating 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.* The industry reports and articles do not discuss the Petitioner's endeavor, nor do they establish how the benefits provided to his clients would result in broader implications to the field.

Further, the Petitioner has not sufficiently 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. The Petitioner's business plan makes various projections that the company will purportedly achieve in five years, such as increasing the sales forecast from \$863,350 in year one to \$4,126,500 by year five. In addition, the business plan indicated the company will hire 11 employees. However, the plan does not provide sufficient detail of the basis for these projections, or adequately explain how these sales and staffing targets will be realized. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. And, even if the endeavor's revenue and job creation projections were properly explained and supported with evidence, they do not establish that the endeavor would operate on a scale rising to the level of national importance, as the Petitioner has not explained how these proposed employment numbers and revenue will impact the area of intended operations.

For the reasons discussed, the Petitioner has not demonstrated that her proposed endeavor would be of national importance, and she therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.