



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

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

In Re: 33967681

Date: SEP. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a security consultant, seeks employment-based second preference (EB-2) immigrant classification as an 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 record did not establish that the Petitioner is qualified for the EB-2 classification or that a waiver of the job offer requirement is 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

- 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.

II. ANALYSIS

The Director determined that the Petitioner did not establish that he is an individual of exceptional ability and as such did not establish that he qualifies for the EB-2 classification.² Specifically, the Director concluded that the foreign language documents submitted in support of the Petitioner's claim as an individual of exceptional ability did not include a certification of the English translation that meets the regulatory requirements.³ Regarding the Petitioner's request for a national interest waiver, the Director found that the Petitioner did not establish any of the three *Dhanasar* prongs.⁴

On appeal, the Petitioner asserts that the document translation certificates are sufficient, that he qualifies as an individual of exceptional ability, and that he has established eligibility for a national interest waiver under each of the three *Dhanasar* prongs. Because, as we discuss below, we conclude that the Petitioner has not demonstrated the national importance of the proposed endeavor, we need not reach the question of whether he qualifies for the EB-2 classification or the second or third prongs of the *Dhanasar* framework and we reserve our opinion regarding those issues. *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).

The Petitioner's proposed endeavor is to work as a security consultant. He states that he will establish a business which will provide consulting services for law enforcement and will conduct security program evaluations, provide technical assistance, and offer trainings. In determining that the Petitioner did not establish the national importance of the endeavor, the Director concluded that the evidence did not show that the Petitioner's services are better, different, or cost less than those already available in the United States. The Director also concluded that although the articles and industry reports in the record provide information about crimes statistics, they do not discuss the Petitioner, the proposed endeavor, or how the endeavor may have national or even global implications within a particular field. Additionally, the Director found that the Petitioner's support letters were insufficient because the letter writers did not include their resumes or other evidence to establish their expertise in the field of security.

² The Petitioner does not claim to qualify for the EB-2 classification as an advanced degree professional.

³ Any document containing foreign language submitted to USCIS must be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

⁴ The Director concluded that the Petitioner did not establish the national importance of the proposed endeavor, that he is well-positioned to advance it, or that, on balance, waiving the job offer requirement would benefit the United States. However, the Director did not make a finding as to whether the Petitioner established the substantial merit of the proposed endeavor.

In appealing the Director's findings regarding the national importance of the proposed endeavor, the Petitioner emphasizes his specialized knowledge and experience as a police officer in Brazil and contends that this experience makes him well-prepared to offer security consulting services. In response to the Director's concern about the expertise of the letter writers, the Petitioner notes that these letters were submitted by businesses.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Upon de novo review, we agree with the Director that record does not establish the national importance of the proposed endeavor. While the Petitioner claims that he has significant experience and knowledge in law enforcement and security services, this claim does not help demonstrate the potential prospective impact of the proposed endeavor. Evidence of a petitioner's skills, knowledge, and record of success generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether they are well-positioned to advance it. *Id.* The Petitioner must establish that his specific endeavor—to establish a private security consulting business—has national importance under *Dhanasar*'s first prong. While a petitioner's achievements in the field may be relevant in some circumstances in establishing the potential prospective impact of their endeavor, the Petitioner has not explained how his experience or knowledge demonstrates that the endeavor has the potential to impact U.S. national security, crime rates, the private security industry, or the economy at a level commensurate with national importance.

Regarding the letters of support, we acknowledge the Petitioner's claim that these letters were submitted by businesses, rather than by individuals specifically holding themselves out as experts in the field of security. This includes a letter from a client that expresses satisfaction with the Petitioner's services in setting up security systems and cameras and a letter from a business seeking a potential partnership with the Petitioner. Nevertheless, the letters do not sufficiently demonstrate that the potential prospective impact of the Petitioner's proposed endeavor rises to the level of national importance. Although the letter writers speak highly of the Petitioner and the Petitioner's security consulting services, any successful business will presumably have clients who are satisfied with the business's services. The Petitioner has not offered, and the letters do not establish, a sufficiently direct connection between the Petitioner's proposed security consulting services and any potentially nationally important impact.

The Petitioner does not raise any other claims on appeal related to the Director's finding that the record does not establish the endeavor's national importance. Moreover, upon de novo review, we conclude that the Petitioner has not established the national importance of the proposed endeavor, as required by the first prong of the *Dhanasar* framework. Therefore, he has not demonstrated eligibility for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to his qualification as an individual of exceptional ability and the second and third *Dhanasar* prongs but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve

our opinion regarding whether the record establishes the remaining *Dhanasar* prongs or his eligibility for the EB-2 classification. See *INS v. Bagamasbad*, 429 U.S. at 25 (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 alternative issues on appeal where the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude 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.