



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

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

In Re: 33887743

Date: SEP. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, 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 although the Petitioner is an individual of exceptional ability, he did not establish 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. 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.” *Id.*

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 for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).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. at 889.

II. ANALYSIS

The Petitioner filed this petition on August 15, 2023. After analyzing the initial evidence, the Director issued a request for evidence (RFE), noting the deficiencies in the record, to which the Petitioner timely responded. The Director denied the petition concluding that although the Petitioner is eligible for EB-2 classification as an individual of exceptional ability, he did not establish that a waiver of the job offer, and labor certification requirement, is in the national interest because he did not meet any of the three *Dhanasar* prongs.

Because a petitioner must establish that they meet all three prongs of the *Dhanasar* framework to obtain a national interest waiver, if even one of the prongs is not established, a petitioner is ineligible for this waiver. Accordingly, we will analyze the Petitioner's evidence under prong one and, as explained below, because he has not established his eligibility under that prong, we decline to reach and hereby reserve the Petitioner's arguments regarding 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). Similarly, we reserve review of the Director's determination that the Petitioner qualifies for EB-2 classification as an individual of exceptional ability. *Id.*

A. Prong One of the *Dhanasar* Framework

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." *Dhanasar*, 26 I&N Dec. at 889. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The term "endeavor" is more specific than the general occupation; 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>. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *Id.* As such, we will first identify the Petitioner's endeavor as shown in the record. Then, we will evaluate the Petitioner's evidence in support of the endeavor's substantial merit and national importance.

The Petitioner asserts that he will serve as the CEO of his business, [REDACTED] (the Company), located in [REDACTED] Massachusetts, with plans to open branches in [REDACTED] California and [REDACTED] Washington. The Company provides business intelligence services using

information technology (IT) tools and solutions.² The Petitioner explains that the Company will focus on developing and implementing integrated solutions, with the purpose of providing “world-class IT services and customized business intelligence solutions to U.S. companies,” thereby enhancing their “information systems’ environments, improving operational efficiency and decision-making capabilities.” The Petitioner asserts the Company will focus on key industries (manufacturing, retail, finance, and healthcare) and create positive ripple effects on commercial matters, business intelligence, the domestic job market, the national economy, and the overall business ecosystem. As the endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education, we agree with the Director that the endeavor has substantial merit. *Id.* However, as discussed below, the Petitioner has not established that his proposed endeavor is of national importance.

In describing the Company’s national importance, the Petitioner asserts its services and mission aligns with federal government initiatives that “prioritize technological advancement and innovation as drivers of the nation’s prosperity,” and are focused on job creation, workforce development, and closing the digital skills gap to meet the economy’s needs. He further asserts that his endeavor aligns with federal government initiatives aimed at supporting key industries, technological advancements, “sector-specific capabilities,” and which support efforts by companies to “leverage their data effectively . . . [and] harness the power of data for informed decision making.” He also asserts that the Company’s services align with federal initiatives related to cybersecurity. In addition, the Petitioner asserts that immigrant entrepreneurship drives business, and expands economic opportunities, which will benefit the U.S.’s social welfare and cultural enrichment.

In his RFE response, the Petitioner further asserted that his endeavor is of national importance because the Company will “align seamlessly with the nation’s objective of promoting technological innovation, enhancing technical skills, and bolstering the competitiveness of the U.S. IT and data analytics industry.” He maintains that the Company is nationally important “in a world increasingly driven by data” because the services it offers helps its customers “innovate their operations through data-driven insights, enhancing their competitive edge both domestically and globally.” He reiterates how his endeavor aligns with several federal government initiatives related to innovation in technology and data processing, supporting small and medium sized businesses, data protection and cybersecurity, promoting international trade and maintaining the standing of U.S. businesses and our “entrepreneurial ecosystem.” His RFE response also highlights his expertise and contends that “[his] knowledge of various development methodologies and proficiency in utilizing cutting-edge tools positions [the Company] to adopt the latest technologies and best practices, staying ahead of the curve in the dynamic IT landscape.”

To support his assertions, the Petitioner relies heavily on industry reports and articles discussing the importance of high skilled immigrants and immigrant entrepreneurship to economic growth and American competitiveness. We acknowledge the Petitioner’s assertions, and the articles he provides that discuss the need for a startup visa for entrepreneurs, like him, to start businesses in the United States. However, while the articles provide a context for some of his assertions, they do not

² We acknowledge that in response to the Director’s RFE, the Petitioner provided evidence of the Company’s website, its incorporation in the State of Massachusetts on [REDACTED] 2023, and the Company’s Internal Revenue Service’s employer identification number.

specifically discuss the Petitioner’s proposed endeavor or explain how his endeavor would have broader implications. See *Matter of Chawathe*, 25 I&N Dec. at 375 (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider the quality, relevance, probative value, and credibility of the evidence). Further, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor, as we explained in *Dhanasar*. *Matter of Dhanasar*, 26 I&N Dec. at 889. As such, the inability of the Petitioner to apply for a startup visa for entrepreneurs is irrelevant to our determination of whether the proposed endeavor is of national importance. *Matter of Chawathe*, 25 I&N Dec. at 375.

We explained 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 . . . may well be understood to have national importance.” *Matter of Dhanasar*, 26 I&N Dec. at 890. We acknowledge that the Petitioner’s business plan projects the creation of nineteen jobs by its fifth year of operation, as well as \$3.3 million in cumulative salaries, \$4.2 million in revenue, and \$113,000 in paid income taxes in the same five-year period. However, his business plan does not sufficiently detail the basis for the revenue and staffing projections, nor does it adequately explain how the revenue and staffing projections will be realized. *Matter of Chawathe*, 25 I&N Dec. at 376. As such, without more, the Petitioner has not established that his endeavor will have the significant potential to employ U.S. workers or other substantial positive economic effects at a level commensurate with national importance.

The Petitioner asserts that because his business will be located in [redacted] Massachusetts, which is a designated HUBZone area, his endeavor is of national importance.³ However, the Petitioner does not indicate that his endeavor would participate in the HUBZone program or that it would be eligible to do so. Further, while it appears that the Petitioner may have intended to equate a designated HUBZone with an “economically depressed area,” the record does not support a conclusion that this is an equitable comparison. *Id.* The Petitioner has not otherwise claimed or provided evidence that the area where the Company will operate is economically depressed, that it 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, business activity, or related tax revenue. *Id.*

The Petitioner stresses that because his endeavor concerns the provision of IT services, it aligns with federal government initiatives aimed at maintaining the U.S.’s STEM competitiveness. We acknowledge the importance of STEM technologies and research, whether in academic or industry settings, and these not only have substantial merit in relation to U.S. science and technology interests, but do not necessarily have sufficiently broad potential implications to demonstrate national importance. *Dhanasar*, 26 I&N Dec. at 890. In this case, the record does not suggest that the Petitioner intends to advance STEM technologies and research. Moreover, while the Company will offer software developing and cloud computing services to its clients, the Petitioner has not established how the Company would affect STEM employment levels in his industry or the U.S. economy more broadly, consistent with national importance. *Matter of Chawathe*, 25 I&N Dec. at 376.

³ Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized business zones, with a goal of annually awarding at least 3% of federal contract dollars to HUBZone-certified companies annually. See “HUBZone Program,” <https://www.sba.gov/federal-contracting/contracting-assistanceprograms/hubzone-program>.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from a professor at [REDACTED]. In addition to describing the Company's purpose and services, the professor asserts that the endeavor is of national importance because of the economic impact it will have by creating jobs, stimulating the local economy in Massachusetts, and contributing to the U.S.'s economic growth and vitality. In addition, he discusses the importance of the "big data and business analytics market," the "need for corporate agility and increasing usage of automation solutions" to expand "cloud migration services globally," which he asserts the Company will support. He emphasizes that cloud computing leads to job creation and new businesses as well as increased productivity and cost savings. He also emphasizes that the proposed endeavor supports national initiatives concerning attracting STEM talent and that it broadly enhancing social welfare or cultural enrichment by enabling organizations to operate more effectively and efficiently.

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 restates the same national importance arguments the Petitioner asserts, and which we addressed in the paragraphs above. Further, while the opinion correctly opines on the national importance of STEM and the technology industry to the U.S.'s economy in general, this argument supports the substantial merit of the endeavor but not the national importance of the Company. *Id.*

B. Other Considerations

On appeal, the Petitioner asserts the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." However, the Petitioner does not point to specific examples of this within the Director's RFE or denial. *Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner also does not offer a detailed analysis explaining how the Director "imposed novel substantive and evidentiary requirements" in denying the petition or support his assertion with any pertinent law or regulations. *Id.*

The Petitioner also generally alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law, to [his] detriment" The standard of proof governing immigration benefit requests is "preponderance of evidence." *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met its burden under the preponderance standard, we evaluate whether a petitioner's claims are "more likely than not" or "probably" true, but also consider the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). The Director's RFE explained the deficiencies and concerns in the Petitioner's initial filing and provided a non-exhaustive list of documentation and evidence the Petitioner could submit to address such deficiencies. Therefore, the Director followed the applicable regulations and procedures in adjudicating this petition, and there is no basis to determine the Director held the Petitioner to a higher standard of

proof. 8 C.F.R. § 103.2(b)(8). As such, the Petitioner has not met his burden. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

III. CONCLUSION

The Petitioner has not established the national importance of his proposed endeavor, and consequently that a waiver of the job offer and labor certification process, in the exercise of our discretion, is in the national interest.

ORDER: The appeal is dismissed.