



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

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

In Re: 33366987

Date: SEP. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a high technology consultant and trainer, 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 that the Petitioner is eligible for a waiver of the job offer requirement 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,<sup>1</sup> grant a national interest waiver if the petitioner demonstrates that:

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<sup>1</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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

- 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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue 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. The first prong of the *Dhanasar* analytical framework requires the Petitioner to establish the proposed endeavor has both substantial merit and national importance. The Director determined that the Petitioner’s proposed endeavor has substantial merit.<sup>2</sup> For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner stated that he intends to “further expand business advisory services into the United States in order to help serve the Manufacturing Industry and National Interest of the American people . . . I want to educate other professionals in multiple tests. This includes teaching new professionals in the field, the many different technologies that can be applied to detect defaults in machines and systems . . . My [p]riority will be [to] prepare a team to act in the identification of problems in large machines, as an example, Power Generation Turbines, Paper Machines, Large Ovens, among others. High-tech techniques will be used before catastrophic failure can occur. Static tests will also be performed in the mechanical, electrical, pneumatic and hydraulic areas . . . [The Petitioner] will also develop a new tool, which will be a PC/Mobile Software to archive and gather all the results of tests and analyzes [sic] carried out in the field.” The Petitioner’s business plan provides that he will offer maintenance analysis on large machines and consulting services, and help companies create and manage high-performance manufacturing processes that drive sustained and profitable growth. In response to a request for evidence (RFE), the Petitioner provided more detail on his proposed endeavor. He stated his company will “offer specialized analytics and consulting services tailored for the manufacturing sector related to predictive maintenance, alongside providing advanced technology training for professionals.” The Petitioner mentioned that his company would proactively identify and mitigate potential equipment failures, provide high level technology training services, and create software designed to centralize and streamline the analysis of test results in manufacturing settings.

The record includes, but is not limited to, statements from the Petitioner, his business plan, articles on predictive maintenance, letters from former clients, letters of recommendation, education records, certificates, a resume, an employer letter, evidence of past projects, and immigration records.

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<sup>2</sup> The Director also found that the Petitioner is well positioned to advance the proposed endeavor. We will not address whether the Petitioner has established whether the proposed endeavor has substantial merit or whether he is well positioned to advance the proposed endeavor as the determination that the proposed endeavor lacks national importance is dispositive of the appeal. *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).

The Director determined that the Petitioner did not establish his proposed endeavor offers benefits that extend beyond his company to impact the field more broadly, and the Petitioner did not establish the level of projected employment would have the potential to provide substantial positive economic effects to the region the business is in or the nation. The Director noted the Petitioner's focus on his field, but that national importance analysis focuses on the impact of what an individual intends to do rather than the specific occupational classification. Finally, the Director mentioned that the Petitioner did not provide sufficient evidence of the prospective endeavor's potential prospective impact, including broader implications, or national or global implications within the field; significant potential to employ U.S. workers; substantial economic effects, particularly in an economically depressed field; broad enhancement of societal welfare; or broad enhancement of cultural or artistic enrichment. Therefore, the Director concluded that the Petitioner did not establish the proposed endeavor is of national importance.

On appeal, the Petitioner claims that the Director violated the Administrative Procedure Act (APA) as the RFE and denial decision included contradictory, arbitrary, and boilerplate statements, and little to no discussion of the evidence submitted. The Petitioner does not cite to a specific section of the APA that USCIS is claimed to have violated. Therefore, we are unable to address this claim.

The Petitioner notes the absence of discussion of his business plan in relation to the national importance of the proposed endeavor. He states that the business plan provides analysis of market needs, operational strategies, projected impacts, and sustainability considerations. 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. The business plan provides that the company will provide timely and creative solutions, efficient operations, maximum sales, visit trade shows and meet clients in-person, and help companies create and manage high-performance manufacturing processes. The business plan lists several types of technology to be provided including, but not limited, to vibration analysis, thermal analysis, corona analysis, steam trap analysis, electric current analysis, electrical insulation analysis, and transformer ration analysis. The Petitioner mentions that he will leverage artificial intelligence and "Internet of Things" to proactively identify and mitigate potential equipment failures, significantly reduce unexpected downtimes, and foster sustained, profitable growth. Additionally, the business plan lists the training modules included with the ultrasound training course the Petitioner plans to teach. While the Petitioner's statements reflect his intention to provide high technology consulting and training services to his company's future clients, he 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, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field, the high technology consulting and training services industry, or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner's business plan describes his educational and professional background, which includes 39 years of work experience. The record also includes letters from former clients, letters of recommendation, education records, certificates, a resume, an employer letter, and evidence of past projects. The Petitioner's skills, knowledge, and prior work in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign

national.” *Id.* at 890. The first prong of the *Dhanasar* framework, however, focuses on the proposed endeavor and not on the Petitioner’s education and prior work in the field. The national importance of the Petitioner’s proposed endeavor stands separate and apart from his education, skills, and job experience.<sup>3</sup>

The business plan also discusses the current market, the field of predictive maintenance and its benefits, and the different fields of manufacturing. The issue here is not the national importance of the field, industry, or profession in which the individual will work; rather we focus on the “the specific endeavor that the foreign national proposes to undertake.” *Dhanasar*, 26 I&N Dec. at 889.

Regarding future staffing, the Petitioner’s business plan anticipates that his company will have 5 employees in year one, 7 in year two, 9 in year three, 11 in year four, and 13 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while his plan offers total sales of \$800,000 in year one, \$1,100,000 in year two, \$1,350,000 in year three, \$1,800,000 in year four, and \$2,400,000 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved. The Form I-140 does not list an address where his company would be located nor does his business plan. The Petitioner has not demonstrated that his projected number of employees would significantly affect the area they would work in. As such, the record does not establish how his workers’ employment in any one location would significantly benefit that geographic area.

The business plan further mentions the development of a new software tool that will simultaneously analyze results from machines, equipment or plant systems. The Petitioner does not provide sufficient detail and establish how this type of software has national importance. He states that his proposed endeavor will improve national manufacturing policies through strategic innovation and sustainable practices; stimulating economic growth via increased industrial efficiency and technological advancements; and boosting the global prominence of U.S. manufacturing via cutting edge solutions and collaborations, pioneering and perfecting approaches for sustainable and efficient manufacturing operations, ensuring compliance with the highest standards and best practices in the industry, encouraging the professional growth of the next generation of experts, and providing environmental benefits. The Petitioner states that his contributions have profound implications for the U.S. economy and the manufacturing industry’s competitiveness on a global scale, and the planned expansion across the United States signifies a commitment to enhance industrial growth, technological innovation, and economic development on a national scale. The Petitioner, however, has not provided sufficient evidence demonstrating that his high technology consulting and training services business would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of his proposed endeavor stands to offer broader implications in his field or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States. The Petitioner does not adequately explain what the impact on the national economy would be, and the record does not establish that his company would have sufficient size or scope to substantially affect the nation’s economy or employment rate. The Petitioner has not shown that the specific endeavor he

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<sup>3</sup> See *Dhanasar* at 890.

proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits. He has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner has not established that he meets the requisite first prong of the *Dhanasar* analytical framework. Therefore, he 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 third prong outlined in *Dhanasar*. *See Bagamasbad*, 429 U.S. at 25; *see also L-A-C-*, 26 I&N Dec. at 526 n.7.

**ORDER:** The appeal is dismissed.