



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

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

In Re: 19615915

Date: AUG. 4, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur, seeks second preference 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 EB-2 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 Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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. 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.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or

educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

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 after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,<sup>1</sup> grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen’s proposed endeavor has both substantial merit and national importance; (2) that 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 that 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 he or she 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; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the noncitizen’s qualifications 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. In each case, the factor(s) 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.<sup>2</sup>

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<sup>1</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

## II. ANALYSIS

The record indicates 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 first prong of the *Dhanasar* analytical framework. Specifically, we conclude that the Petitioner has submitted insufficient and inconsistent evidence regarding the substantive nature of his proposed endeavor.

The Petitioner indicated in his initial filing that he intends “to advance [his] career as an Entrepreneur, developing international business activities by promoting cross-border commercial trade transactions in various industries, which will enhance, substantially, the United States economy.” He stated that he currently works as the President of [REDACTED] as well as in the capacity of Executive Director and Partner of [REDACTED] both of which are engaged in manufacturing and distribution of products for the Brazilian and American markets. He claimed that in these position, he “ensure[s] the protection and maintenance of the company’s assets, keeping in control the evolution of the business operations and businesses,” and indicated that his actions are “integral to the continued success of the businesses.” The Petitioner stated that he intends to continue working as an entrepreneur in the United States by “formulating policies managing operations, and strategically planning the use of materials and human resources” for U.S. companies. He further stated that he intends to “continue using [his] vast expertise and knowledge in many areas to provide expert managerial and operational advice to U.S. companies,” and that his “experience working in global industries of importance will allow [him] to work with U.S. companies looking to capitalize in multiple sectors, especially including those doing business or planning on expanding their business internationally, with the greatest of ease.”

In his professional plan, the Petitioner clarified that he intends “to continue working as an entrepreneur, developing new enterprises for the North American market and generating more direct and indirect jobs through [his] endeavors” and will “continue designing innovative strategies, disrupting industry practices, and maintaining good working relationships with investors, identifying any opportunities for cross-border projects through extensive research and development.” He further claimed that his specific endeavor will potentially impact the U.S. in the following ways:

- Designing, implementing, and managing all activities in the commercial, strategic planning, business, and financial areas of a business;
- Consulting on best industry practices, which prioritize market-needs, within a wide range of industries;
- Job creation, which will increase the national GDP;
- Networking with industry peers, competitors and prospective clients to continuously develop new business opportunities;
- Developing cross-border projects between the U.S. and Latin America, and other global markets.

The Petitioner also submitted letters of support discussing his business accomplishments. [REDACTED]  
[REDACTED] Corporate Executive Chief for [REDACTED] states that he entered into a

business partnership with the Petitioner in 2016 in order to export products from his company, [ ] to the United States. [ ] states that the Petitioner “was instrumental to the development of the business plan and the detailed feasibility evaluation for the development of this project,” and further states that the Petitioner “played a pivotal role presenting the necessary data” which resulted in an exclusive contract for the American market. Based on this success, [ ] claims that he is currently working on another project with the Petitioner to introduce [ ] cleaning products to the U.S. market. [ ] concludes by stating that the Petitioner “demonstrates a high level of knowledge in the management of companies and business” and notes that his 25 years of experience in the industry will enable him to succeed.

[ ] Financial Advisor for [ ] Brazil’s first financial planning boutique, indicates that he and the Petitioner developed several investment strategies together, which “generated meaningful results in the financial management of resources.” He further states that the Petitioner was “responsible for the implementation of exchange protection controls that proved effective in the face of significant changes in the exchange rate, thus increasing margins and revenues.” He concludes that the Petitioner “is a professional of great competence” and that “the United States will greatly benefit from his unparalleled expertise.”

The Director issued a request for evidence (RFE) asking the Petitioner to provide further information and evidence regarding his proposed endeavor and its national importance. In response, the Petitioner provided a revised professional plan and statement, noting that subsequent to the filing of the petition, he purchased all outstanding shares of [ ] and is currently the sole owner of the company, which distributes biodegradable cleaning products for companies and individuals. He stated as follows:

Through my current company in the U.S., [ ] I will benefit U.S. businesses and individuals in the following way:

- *Provide Earth Friendly, Biodegradable cleaning products for companies and individuals*
- *Offer the market a one-stop solution for Natural Biodegradable [ ] Products, Commercial and Residential Cleaning Services, Surfaces Treatment, and Virus Disinfection*
- *Fill a vital role in the market to address growing demand for Natural Cleaning Products free of harmful chemicals, and concern over the potential effects on Global Warming, with a growing worry over how to safely disinfect against diseases, such as the novel Coronavirus*
- *Generate tax revenue and create jobs for the U.S.*

Although parts of his revised statement repeat his earlier assertions, he noted that “disinfection of Retail Stores, Offices, and Houses has become urgent and necessary” due to the COVID-19 pandemic and that his company’s provision of environmentally friendly cleaning products in this volatile time will prove valuable to U.S. consumers. In this new statement, he omitted mention of seeking direct employment with U.S. companies as an entrepreneur and business developer/advisor, and instead stated that he will be an entrepreneur and president/owner of his own company.

In the decision denying the petition, the Director determined that while the Petitioner's proposed work has substantial merit, he had not demonstrated the national importance of his proposed endeavor.<sup>3</sup> The Director acknowledged that although the Petitioner demonstrated his intent to grow and develop his enterprise in the United States to generate revenue and create jobs, he did not establish that his proposed endeavor had national importance. The Director concluded that the Petitioner had not shown that his undertaking "will have potential prospective impact," noting that the Petitioner had not demonstrated that his proposed endeavor stands to have broader implications, or national or global implications, within a particular field.

On appeal, the Petitioner contends that he has demonstrated the national importance of his proposed endeavor under the preponderance of evidence standard and that the Director's decision was in error because it imposed a "stricter standard of proof." With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his 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.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director analyzed the Petitioner's documentation and weighed his evidence to evaluate whether he had demonstrated, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and 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.

Here, the nature of the Petitioner's proposed endeavor is unclear. The information he provided in response to the Director's RFE did not clarify or provide more specificity to his initially described proposed endeavor of working as an entrepreneur and business developer/advisor who would contribute directly to the U.S. economy by "helping U.S. businesses improve their strategies and practices" by providing strategic planning services, developing business plans, and conducting financial feasibility studies. Rather, it changed the focus of his work and the nature of his proposed endeavor altogether. The Petitioner's initial filing contained little to no information on his proposed

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<sup>3</sup> The record contains information about immigrants' contribution to the U.S. economy, immigrant entrepreneurs as business creators, and the value of entrepreneurs to our country's economy. In addition, the Petitioner provided articles discussing immigrant entrepreneurs' economic contributions, entrepreneurs' involvement in promoting a more inclusive economy, the entrepreneurial legacy of immigrants and their children, and information about entrepreneurs' role in job creation and innovation, the economic contribution of immigrant-launched businesses, and immigrant tax contributions and spending power. Although the exact nature of the Petitioner's proposed endeavor is unclear, the record shows that the Petitioner's proposed work has substantial merit, and we agree with the Director's determination on this issue.

endeavor but simply included a statement that his occupation is that of an entrepreneur and that he intended to offer his services to U.S. companies.

In response to the RFE, the Petitioner provided a revised professional plan emphasizing that his goal was to “find a vital role in the market to address growing demand for Natural Cleaning Products” and offer a “one-stop” solution to clients seeking natural, biodegradable cleaning products. The record shows that the Petitioner did not obtain his ownership interest in [redacted] until January 2020, over one year after he filed the petition. Although he highlighted the experience he gained in the role of president for [redacted], his initial description of the proposed endeavor did not include any plans to purchase the company, and the Petitioner does not explain how he would be able to devote sufficient attention both to running his own company and to providing business consulting services to one or multiple U.S. companies, as originally asserted. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner’s purchase of a new company after the filing date cannot retroactively establish eligibility, and a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971), which requires that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The Petitioner’s focus on the distribution of biodegradable cleaning products presented in the RFE substantively differs from his initial plan to provide consulting services to U.S. employers as an entrepreneur/business advisor. The business plan for [redacted] provides information on market segmentation for various cleaning products and the main industries, as commercial and industrial, that will benefit from the company’s eco-friendly products, and includes information on external competitors such as ABM Industries, Coverall Health Based Cleaning System, Jan-Pro Franchising, Jani-King International. The plan indicates that in the first five years of operations, the business intends to generate 112 jobs for U.S. workers (including janitors, cleaners, maids, housekeeping cleaners, sales representatives, and supervisory positions) across four states (Florida, California, Texas, and Georgia), and claims the business will ultimately have a total of four business units. The business plan further asserts that the company will generate revenues of approximately \$13.5 million during that period through the distribution of cleaning products and the provision of cleaning services, but there is no mention of the provision of business consultation or advisory services as originally claimed. We therefore conclude the RFE response presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg’l Comm’r 1978); *see also Dhanasar*, 26 I&N Dec. at 889-90. Again, the Petitioner’s purchase of a new company and his revised plan to focus his endeavor on the import and distribution of biodegradable cleaning products and services presented after the filing date cannot retroactively establish eligibility. We reiterate that a petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 175; *see also Matter of Katigbak*, 14 I&N Dec. at 49.

The Petitioner maintains on appeal that he will “continue working in the United States as an Entrepreneur in the high-growth business industry of eco-friendly cleaning supplies and services, serving the commercial and residential sectors, which clearly demonstrates his commitment and ability

to drive his proposed endeavor in the United States.” However, he does not sufficiently explain how his revised plan has national importance, rather than primarily benefiting his own company and its clients. Moreover, although he reasserts on appeal that his endeavor will contribute to tax revenue, prioritize the domestic job market, and ultimately help increase monetary flow on national and regional levels, his revised professional statement indicated that his ultimate goal is to provide the U.S. market a one-stop solution for obtaining biodegradable cleaning products. The Petitioner does not adequately distinguish this alternate endeavor on appeal from his prior assertions about the overall impact of entrepreneurship and the impact his consulting and advisory services would have on the U.S. economy.

Accordingly, the specific nature of his proposed endeavor remains unclear. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. We conclude that his initial filing and the RFE response contained differing jobs and insufficiently detailed statements concerning his proposed future work. Furthermore, his appeal does not address the fact that his new role as a company owner began after the initial filing of the petition. If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

Therefore, since we are unable to specifically identify the Petitioner’s proposed endeavor, we are likewise unable to evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement. Generally, we look to evidence documenting the “potential prospective impact” of a petitioner’s work. Here, while the Petitioner’s initial statements reflect his intention to provide business consulting and advisory services to U.S. companies, and revised statements indicate that he intends to import and distribute biodegradable cleaning products and services for the benefit of U.S. consumers, he has not offered sufficient information and evidence to demonstrate that the prospective impact of either endeavor rises to the level of national importance. Moreover, the Petitioner does not show through supporting documentation how providing biodegradable cleaning products and related services stands to sufficiently extend beyond his own company to impact the industry or the U.S. economy more broadly at a level commensurate with 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 record does not show that either of the Petitioner’s proposed endeavors stands to sufficiently extend beyond his company and its future clientele, or companies to whom he may lend his expertise, to impact the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the 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 claims on appeal that his proposed endeavor will “have immense ripple effects” upon key commercial activities in the United States - namely, addressing the need for individuals and business to have necessary products to properly disinfect businesses and residential properties given the challenges presented by the COVID-19 pandemic. As previously noted, he provided no specific information or data relevant to economic effects potentially resulting from general entrepreneurship and business consulting activities offered to U.S. companies. Moreover, he has not shown that his company’s future staffing levels and business activity stand to provide substantial economic benefits in Florida, California, Texas, Georgia, or the United States. The

business plan does not sufficiently detail the basis for its financial and staffing projections, nor does it adequately explain how these projections will be realized. While the sales forecast for [ ] indicates that the Petitioner's company has growth potential, it does not demonstrate 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. In addition, although the Petitioner asserts that his company will hire U.S. employees and that his endeavor will create jobs for various individuals in the cleaning/janitorial field, he has not offered sufficient evidence that the area where his company operates is economically depressed, that he 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 or business activity.<sup>4</sup> Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the Petitioner has not provided consistent information regarding his proposed endeavor, we cannot conclude that he meets the first prong of the *Dhanasar* precedent decision. The Petitioner, therefore, has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### 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.

**ORDER:** The appeal is dismissed.

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<sup>4</sup> The Petitioner indicated that businesses and homeowners in [ ] and [ ] Florida make up the primary market for his company's services, and that the company facilities are located in [ ] Florida.