



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

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

In Re: 23077028

Date: DEC. 21, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a project manager and consultant, seeks second preference immigrant classification as an advanced degree professional, 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates eligibility under the analytical framework outlined in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center determined the Petitioner qualifies as a member of the professions holding an advanced degree. Nevertheless, the Director denied the petition, concluding that the record did not establish the national importance of the proposed endeavor or that a waiver of the requirement of a job offer would be in the national interest. The matter is now before us on appeal. 8 C.F.R. § 103.3. The Petitioner submits a brief and argues the Director erred in the decision.

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. 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.

Section 101(a)(32) of the Act, 8 USC § 1101(a)(32), provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, 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). In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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. See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director determined that the Petitioner qualifies for the underlying EB-2 classification. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework. While we do not discuss each piece of evidence, we have reviewed and considered each one.

A. The Proposed Endeavor

In the initial January 2019 filing, the Petitioner stated that his proposed endeavor is to work in the construction industry as a project manager-consultant for the company [REDACTED]. After reviewing the evidence submitted with the petition, the Director issued a request for evidence (RFE). The RFE notified the Petitioner that, among other deficiencies, the evidence did not establish the national importance of the proposed endeavor. In his RFE response, the Petitioner clarified that through his employment with [REDACTED] he will work as a project manager and construction superintendent. The record contains a March 2021 letter, which states that [REDACTED] has employed the Petitioner since July 2020. The Petitioner has not acknowledged or explained the change in both in his employer and job title.

The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). USCIS regulations affirmatively require a petitioner to establish eligibility at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). Additionally, a visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978).¹ The Petitioner should be aware of this in any future filings, as a change in the proposed endeavor is material to the benefit sought.

¹ The Director found the Petitioner established eligibility under the second *Dhanasar* prong based, in part, on the Petitioner’s employment with a construction company. As the [REDACTED] job opportunity began after the initial filing, it cannot serve as eligibility at the time of filing. Therefore, we withdraw the Director’s finding that the Petitioner has established he is well positioned to advance his endeavor.

B. National Importance

Even if we assume the Petitioner proposes to work as a project manager-consultant for construction companies generally and without regard to which company, we nevertheless conclude that he has not established the national importance of the proposed endeavor. To support a finding of national importance, the Petitioner emphasized the importance of green construction, real estate, and Science Engineering Technology and Mathematics (STEM) careers. He highlighted the economic importance of STEM professionals, specifically civil engineers, by providing statistics on STEM industries' high potential for growth, as well as the demand for and shortage of engineers. Similarly, the Petitioner cited statistics on growth potential for the construction and real estate fields, the billion-dollar value of the industries, and the jobs they provide. Despite these claims, the record contains insufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his specific work. We conclude that the record does not show benefits to the U.S. regional or national economy resulting from the Petitioner's employment would reach the level of "substantial positive economic effects" contemplated by Dhanasar. *Id.* at 890.

The Petitioner suggested that various social factors, such as the COVID-19 pandemic, affordable housing crisis, and a shift towards eco-friendly sustainable construction processes elevate the importance of project managers and civil engineers in construction. The Petitioner provided documents discussing government initiatives to address environmental concerns, COVID-19 safety protocols, and the shortage of STEM professionals. He concluded that his endeavor has national importance because it impacts matters that a government entity has described as having national importance or is the subject of national initiatives. However, the Petitioner has not provided a sufficiently direct connect between his proposed endeavor and any national initiatives. For example, while construction materials and disposal may fall within government initiatives to address environmental issues, the Petitioner has not explained how his specific endeavor within the construction field is the subject of national initiatives. To further illustrate, the Petitioner has not suggested that governmental initiatives fund his proposed endeavor or that his employer is named in a particular initiative's announcement and plans. As such, the Petitioner has not established that the proposed endeavor is the subject of national initiatives, nor has he established that his endeavor operates on a scale that stands to impact matters that a government entity has described as having national importance.

Although we agree that these fields and industries are important and may be the subject of national initiatives, we conclude that this does not necessarily establish the national importance of the proposed endeavor. When determining 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." See *id.* at 889. As the Director's decision explained, much of the Petitioner's evidence relates to the importance of the industries and professions named above, rather than his specific proposed endeavor. Even considering the articles, reports, and statistics collectively and in the totality of circumstances, we still conclude that they do not support a finding that the proposed endeavor has national importance.

To establish national importance, the Petitioner must demonstrate the proposed endeavor's impact. In Dhanasar, we 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. at 889. Although the Petitioner stated that he developed crisis management solutions for supply chain issues, has unique knowledge and skills, as well as rare expertise, he has not supported these assertions with sufficient evidence. The evidence does not suggest that the Petitioner’s methods, solutions, or skills differ from or improve upon those already available and in use in the United States. Stated another way, the evidence does not support a finding that his proposed endeavor will have any implications within a particular field. As the Director explained, the Petitioner’s endeavor may impact the companies he works for and their clientele, but the record does not establish that his proposed endeavor stands to impact the field as a whole.

In addition, even if the Petitioner had provided evidence of his unique skills and knowledge, as well as rare expertise, this would not support a finding that the proposed endeavor has national importance. Rather, these qualities 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 issue here is whether the Petitioner’s specific endeavor has national importance under *Dhanasar*’s first prong. While [redacted] of the [redacted] College of [redacted] as well as current and former employers praise the Petitioner’s education, experience, past success, personal qualities, and the results he achieved, we likewise conclude that these factors relate to the Petitioner’s eligibility under the second *Dhanasar* prong.

The Petitioner emphasized the importance of his duties and role within various companies. In support, he provided letters and statements that describe his duties and the results he achieved for his employers. Documents in the record label the Petitioner’s past and current roles as “pivotal” and “invaluable.” Further, his current employer stated that his work is “vital” to their operations and mission as a company. While this evidence demonstrates the magnitude and importance of his work for the company that employs him, we conclude that it does not demonstrate the national importance of the proposed endeavor. The record does not suggest that the Petitioner’s work would meet the current demand for project managers and civil engineers, address the national shortage in these and related fields, or extend beyond his employers and clients. Accordingly, we conclude that the Petitioner has not sufficiently demonstrated how his proposed endeavor would impact his field or the nation.

On appeal, the Petitioner relies upon the evidence he previously submitted to argue that the Director applied a stricter standard of proof and did not consider the evidence collectively.² The Petitioner draws attention to the personal declaration he submitted with his RFE response in conjunction with the articles and reports he provided. In addition, the Petitioner reasserts that he developed crisis management solutions for supply chain problems during the COVID-19 pandemic, as well as implemented sanitation and safety protocols to keep his workforce healthy. He stresses these examples to demonstrate the importance of his role within the company. However, as explained, while the Petitioner may positively impact his employer, this does not establish that the proposed endeavor will broadly impact the field or his profession. The Petitioner’s valuable services that enable his employer to continue projects during the pandemic certainly supports the importance of his role for that employer. However, this does not establish the national importance of the proposed endeavor.

² The Petitioner also asserts that the Director overlooked facts, but he does not describe with specificity which facts the Director overlooked.

Furthermore, the COVID-19 pandemic began after the Petitioner filed his petition and therefore cannot serve as a basis for the proposed endeavor's national importance.

The Petitioner continues to rely upon the merits of the services he will provide, his personal and professional qualities, and the importance of the construction and engineering fields. However, neither the evidence nor arguments sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the Dhanasar framework.

III. CONCLUSION

The documentation does not establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar would serve no meaningful purpose.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the Dhanasar framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating 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).

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. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.