



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

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

In Re: 23377218

Date: DEC. 21, 2022

Appeal of Texas Service Center Decision

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

The Petitioner 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 although the record demonstrated that the Petitioner qualified for classification as a member of the professions holding an advanced degree, he had not established that 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. 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. 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.

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).<sup>1</sup> *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>2</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.<sup>3</sup>

## II. ANALYSIS

The record reflects that the Petitioner qualifies as a member of the professions holding an advanced degree. The next 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 under the *Dhanasar* analytical framework.

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.

In denying the petition, the Director decided that while the Petitioner’s endeavor has substantial merit and that he is well-positioned to advance his endeavor, the Petitioner had not demonstrated the national importance of his particular proposed endeavor, or 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.

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<sup>1</sup> 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) (*NYSDOT*).

<sup>2</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>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his endeavor in order to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

The Petitioner initially stated that he will work “as a chief executive in the telecommunications and import/export management industries, making contributions of major significance to individuals and corporations here in the United States.” The Petitioner also provided a professional plan and statement, where he described his proposed endeavor as follows:

My career plan in the United States is to continue my career working as a Chief Executive. Through the elaboration of dynamic business channels, I will be able to ensure the success of any company that works with me. I intend to continue using my vast expertise and knowledge in many areas to provide business management to U.S. companies. Moreover my experience working inside industries of national and global importance will allow me to work with U.S. companies looking to capitalize in multiple areas, especially including those doing business in Brazil or those planning to do business there, with greater ease.

The Petitioner further stated that his endeavor is intended to help U.S. companies seize new market and investment opportunities, and indicated that he would perform the following duties in the role of a chief executive:

- Direct or coordinate an organization’s financial or budget activities to fund operations, maximize investments, or increase efficiency;
- Analyze operations to evaluate performance of a company or its staff in meeting objectives or to determine areas of potential cost reduction, program improvement, or policy change;
- Direct, plan, or implement policies, objectives, or activities of organizations or businesses to ensure continuing operations, to maximize returns on investments, or to increase productivity;
- Facilitate cross-border telecommunications and import/export projects between the U.S., Brazil and Latin America;
- Strategically manage and advise on international business projects for U.S. companies to increase revenues and competitiveness;
- Optimize company effectiveness, efficiency, and compliance with cross-border laws and industry regulations;
- Generate U.S. tax revenue.

The Director issued a request for evidence (RFE), asking for more information and evidence to establish the national importance of the proposed endeavor. In response, the Petitioner submitted a “Definitive Statement,” indicating that he will alternatively focus his endeavor on building and expanding his domestic animal services company, C-B-S-, LLC, which he founded in [REDACTED] 2019. The Petitioner described the proposed endeavor as follows:

The company will provide a comprehensive suite of domestic animal services with insurance, including [REDACTED]

[redacted] The company will operate from a fully equipped mobile van offering these services around the cities of [redacted] in [redacted] Florida.

The Petitioner submitted a business plan for C-B-S-, LLC dated February 2, 2022, which indicates that he will be the chief executive officer (CEO) of the company. The business plan indicates that the company would generate 74 jobs for U.S. workers across the United States, and would pay anticipated salaries in excess of \$9.5 million over a five-year period. The plan also indicates that the company anticipates opening six franchised locations by the end of its fifth year of operations.

In denying the petition, the Director concluded that the Petitioner had not demonstrated the national importance of his proposed endeavor, as the evidence did not demonstrate the endeavor's potential prospective impact or show the wider economic effects of the endeavor. The Director noted that the Petitioner did not submit sufficient evidence to show the potential economic impact of the endeavor on the U.S. economy or establish that the proposed endeavor had significant potential to employ U.S. workers. On appeal, the Petitioner submits a virtually verbatim copy of its response to the RFE, stating that the decision to deny the petition was in error and that he is eligible for a national interest waiver.

Preliminarily, we note that the Petitioner's initial description of the proposed endeavor did not include plans to develop and expand his recently formed domestic animal services company; instead, the Petitioner initially indicated that he would work as a chief executive in the telecommunications and import/export industries and would provide business management services to U.S. companies. We 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. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1).<sup>4</sup> 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. 169, 175 (Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that individuals seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

It appears the Petitioner sought to address the Director's concerns regarding how his services as a chief executive would rise to the level of national importance in response to the RFE, but in so doing, he significantly changed his proposed endeavor. Notably, the Petitioner did not adequately explain how he would allocate his time between serving as a chief executive in the telecommunications and import/export industries and providing business management services to U.S. companies (his initially stated endeavor) and his newly presented activities in the RFE response and on appeal indicating he would serve as the CEO of his recently established domestic animal services company. Accordingly, we conclude that both the focus of his endeavor as well as his field of endeavor have materially changed. 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. 8 C.F.R. § 103.2(b)(1). For these reasons, the petition may not be approved.

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<sup>4</sup> The business plan submitted in response to the RFE was drafted in February 2022, over two years after the filing of the petition.

Even if the Petitioner had presented his plans to operate and expand his domestic animal services company at the time of filing, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of this endeavor under the first prong of the *Dhanasar* analytical framework.

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 Petitioner claimed that his new endeavor will support the U.S. economy by creating jobs, generating tax revenue, and buying from U.S.-based suppliers. The Petitioner also claimed that his services "will contribute to the emotional and physical health of his clients by providing safe and caring pet [redacted] services." Although the Petitioner's statements reflect his intention to operate a business that will provide valuable animal care services to its 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. Additionally, the general industry reports and article submitted do not refer to the Petitioner, the company he founded, or the specific endeavor he proposes to undertake; therefore, they do not establish how the proposed endeavor rises to the level of national importance. *See id.*

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. *Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his business and future clientele to impact the animal care services industry or U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. For example, the business plan states that C-B-S-, LLC will generate short-term revenues of \$1,776,000, and estimates that the company will create at least 74 jobs within a five-year timeframe. However, the 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. Further, the business plan provides no information regarding initial investments or capital contributions toward the start-up of the organization. The Petitioner has not provided a foundation or corroborating details to support the growth projections he provided in his business plan, and has therefore not demonstrated that his business will impact the nation at a level commensurate with national importance.

Moreover, although the Petitioner highlighted that his endeavor would positively impact the economy, tax revenue, and job creation, he has not offered sufficient evidence to corroborate these claims. Specifically, he has not shown that his company's future staffing levels would provide substantial economic benefits in Florida or the United States. Again, while he asserts that C-B-S-, LLC will hire 74 U.S. employees within five years, the Petitioner has not offered sufficient evidence that the area where the 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. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the

Petitioner's services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner contends that the Director did not duly consider certain pieces of evidence and failed to apply the correct standard of proof when reviewing the evidence. In support, he relies primarily upon the evidence and arguments previously submitted. While we acknowledge the Petitioner's appellate claims, we nevertheless conclude that the documentation in the record does not sufficiently establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* analytical framework.

For these reasons, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. *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).

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrate his eligibility for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.