



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

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

In Re: 19808402

Date: FEB. 25, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, 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.

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.

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).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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 foreign national. 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 foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national 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 foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ 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*).

² 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).

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.³

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ Accordingly, the issue to be determined on appeal 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 agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating:

I intend to continue using my expertise and knowledge in the field of Marketing and Business Administration. I have extensive experience working as a Marketing Manager within the Brazilian business environment for the past 30 years.

....

My career plan in the United States is to continue working with American companies that require my specialized knowledge, years of experience, and significant expertise. I intend to continue designing marketing strategies, maintaining positive working relationships with peers to facilitate company growth, and identifying viable opportunities for business development through extensive research. I can provide a company's marketing efforts by leveraging the wealth of consumer data from various sources and target messaging accordingly. In addition, by restructuring internal teams, adopting new technology, expanding market opportunities, focusing on the new customer journey, and allowing for a deeper understanding of marketing touchpoints, I will ultimately create a greater competitive advantage.

In response to the Director's request for evidence, the Petitioner submitted a revised statement indicating:

I intend to continue to develop my career in the field of business in the United States, promoting the improvement of marketing, sales, branding, business management, and consequently stimulate the generation of substantial revenue within the U.S. business industry. As such, my proposed endeavor in the United States is to continue working as a marketing director/manager fomenting business and commercial activity domestically and among international markets. I will use my marketing skills to stimulate commercial transactions; to support the improvement of business operations; to promote sales of

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

⁴ As the Director concluded that the Petitioner meets the classification as a member of the professions holding an advanced degree, a determination regarding his classification as an individual of exceptional ability is moot.

products and services of companies; and to facilitate cross-border transactions involving foreign markets.

....

My proposed endeavor is to foment commercial activity and the generation of significant revenue in the U.S. economy.

My proposed professional activities will involve the continue management of my company – [] – and the assistance to other U.S. companies that intend to expand their business abroad, as to foreign companies that intend to introduce their business and operations in the U.S. market.

The Petitioner then discussed his business intentions relating to [], [], [] and []. In response to the Director’s notice of intent to deny, the Petitioner referenced the COVID-19 pandemic and claimed that he “could create, suggest, and enact immediate change to a company’s business model to hedge short-term losses and foster long-term profitability in the current business environment.” On appeal, the Petitioner maintains that his proposed endeavor as a marketing manager can potentially “influence the migration of foreign companies and investments into the U.S., [] create direct and alternate revenue streams for domestic companies, [] help preserve and create jobs for Americans, [] expand the reach of small businesses to a national scale, and is [] a critical profession for the immediate rebound of the U.S. economy in a post-pandemic landscape.” The Director determined that the Petitioner demonstrated the proposed endeavor’s substantial merit but not its national importance. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance aspect of his proposed endeavor.

In 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 *Dhanasar*, 26 I&N Dec. at 889. Although he provided evidence relating to the general marketing manager position and its role in the business sector, the Petitioner must demonstrate the national importance of his specific marketing management services rather than the national importance of marketing management or the marketing manager position in a company or the wide range of fields or industries in which he intends to work. 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.

Throughout the record, the Petitioner emphasized his “expertise and knowledge,” “extensive experience,” and “specialized knowledge, years of experience, and significant expertise.” The Petitioner’s experience and abilities in his field 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 specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.

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. On appeal, the Petitioner contends that he "submitted substantial evidence regarding his proposed endeavor as a marketing manager and detailed the steps he would take to help facilitate the transition of foreign businesses into the U.S. market, which would attract opportunities for significant foreign direct investment, expand job opportunities for U.S. citizens, and help established domestics expand through increased business opportunities." Specifically, the Petitioner references his personal statements and letters from [redacted] and [redacted] "who expressed their need to retain [the Petitioner's] services," and [redacted] and [redacted] "who wish to expand the reach of their domestic business to a national level."⁵ 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, the Petitioner's statements and business letters do not sufficiently show that his proposed endeavor of serving as a marketing manager stands to sufficiently extend beyond his present or potential employers, to impact the businesses or any other industries or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner did not demonstrate, for instance, how his services with these selective businesses, including his own business of [redacted] [redacted] would translate into a greater effect on the overall economy.

Furthermore, the Petitioner has not established 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. Although the Petitioner claims that his endeavor "will provide significant economic benefits to the U.S. by creating foreign and alternate domestic revenue streams, increasing employment opportunity for American workers, and protecting American small businesses from capitulating during a post-pandemic U.S. economy," the Petitioner's documentary evidence does not support his assertions. Neither the Petitioner's statements nor the business letters mention any potential job numbers, demonstrate how his proposed endeavor would impact unemployment levels, or detail any revenue benefits for national or regional areas. 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 marketing manager position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, 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*, therefore, would serve no meaningful purpose.⁶

⁵ On appeal, the Petitioner offers an assessment from [redacted]. However, we will not consider this evidence for the first time on appeal as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

⁶ *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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 demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.