



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

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

In Re: 19808475

Date: FEB. 28, 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 and venture capitalist in the field of information and communications technology,” 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 discretion¹, 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 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.²

II. ANALYSIS

The record indicates that 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.

In his appeal brief, the Petitioner asserts that the “Director erred in assigning three (3) distinct proposed endeavors, ignoring the clarification made in response to the Request for Evidence and applied this incorrect interpretation throughout his review of the petition.” He also contends that the Director “discounted much of the initially submitted and supplemental evidence.” For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*’s first prong, the Petitioner stated in response to the Director’s request for evidence that his “proposed endeavor is to develop and improve the information and communication technology sector in the United States through the provision of telecommunication consulting, training, and project management services, specifically as it pertains to the application of fiber optical technology.” He explained that his undertaking involves “the establishment of a company, [REDACTED] which will provide 1) telecommunication technical consulting, training, and project management in information and communication technologies (including the application of fiber optical technologies) and enhanced security surveillance, and 2) telecommunication service upgrades to already acquired real estate investment properties and future real estate investment properties.” The Petitioner further indicated that his company’s services include “consulting, training, project management, and security system upgrades using fiber optics network.”

In addition, the Petitioner presented his business plan for [REDACTED] which indicates that he intends to “provide telecommunication and fiber optic consulting services to various companies,” “help companies make better hiring decisions by training and certifying fiber optic technicians,” offer “services to local municipalities suggesting better upgrade options,” and “establish long term relationships with key internet service providers to enhance their business performances.” The Petitioner’s business plan contains market analyses, information about the company’s services, business strategies, financial forecasts and projections, and a description of company personnel. With respect to future staffing, the business plan anticipates that [REDACTED] “will hire one Vice President of Business Development and one Office Manager in Year 1,” “one Administrative Assistant and one Project Coordinator in Year 2, and one additional Project Coordinator in Year 3.” His business plan also offers sales projections of \$154,128 in year one, \$169,541 in year two, and \$186,495 in year three.

Furthermore, the Petitioner provided letters of support from his various professional acquaintances.³ With respect to the potential prospective impact of the Petitioner’s work, [REDACTED] a

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

³ While we discuss a sampling of these letters, we have reviewed and considered each one. The letters of support mainly

business line manager with [redacted] (an information technology company in Brazil), asserted that the Petitioner's proposed endeavor "will certainly benefit the United States, as it will significantly improve the country's information and communication technology systems, promoting this sector of the economy and creating countless jobs for Americans." Additionally, [redacted] Undersecretary of Education for [redacted] in Brazil, indicated that the Petitioner's undertaking "will greatly contribute to the progress of the United States in the area of information technology and communication and fiber optic network infrastructure. . . . [T]he United States needs experts with the capacity to improve the conditions of information traffic passing through the network, as well as develop the infrastructure that supports this data flow." Similarly, [redacted] Municipal Secretary of Public Safety in [redacted] stated that the Petitioner's proposed work stands to improve the United States' "information and communication technology sector, advancing network infrastructure, and creating numerous jobs for Americans through his company, [redacted] which will provide telecommunications and fiber optic consulting and support services to U.S. companies."

Likewise, [redacted] chief executive officer of [redacted] (a real estate investment company in Texas), indicated that the Petitioner's proposed endeavor is aimed at "improving the information and communication technology sector and improving fiber optic network infrastructure in the U.S." and "would benefit the country." In addition, [redacted], co-founder of [redacted] (a non-profit organization), asserted that the Petitioner's undertaking contributes "to American society, which needs greater data communication services that will be fast, safe, and reliable."

The record also includes information about job creation in the U.S. technology sector, approaches for building a successful technology company, using technology as an advantage in building a strong company, the U.S. housing shortage, smart student housing development, university and private developer partnerships to address student housing needs, broadband access areas in the United States, the lack of universal broadband adoption in our country, digital poverty in U.S. metropolitan areas, the value of upgrading U.S. broadband infrastructure, and enhancing public safety with emerging technologies. In addition, the Petitioner provided articles discussing the shortage of affordable homes and rental apartments in the United States, conditions in the U.S. home buying market, the shortage of on-campus student housing, the lack of access to high-speed internet in certain parts of the country, factors limiting broadband access in rural areas, advanced fiber optics training, rural broadband infrastructure and next generation precision agriculture technologies, projections for U.S. fiber broadband coverage, optical fiber technologies, energy-efficient telecommunications, COVID-19's impact on broadband access, the basics of fiber optics, and the education technology students will need in a post-COVID environment. He also submitted information about the lack of broadband access in rural areas, solutions to rural broadband internet deployment, over-the-air signals as a technological solution for those without broadband connectivity, technological innovation in the battle against COVID-19, fiber connectivity in the United States relative to other countries, fiber as the centerpiece for wireless advancement, the need for a national fiber broadband access plan, rural communities' lack

focus on the Petitioner's skills, knowledge, and past work experience rather than the national importance of his proposed endeavor. The Petitioner's skills, knowledge, and prior work 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.

of access to high-speed internet, public safety for the smart city, and five strategies for bringing the internet to all Americans. The record therefore demonstrates that the Petitioner's proposed work has substantial merit.

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.

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. While the Petitioner's statements reflect his intention to provide valuable consulting, training, and project management services for his 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 record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact the information and communication technology fields or the 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. Specifically, he has not shown that his company's future staffing levels and consulting activity stand to provide substantial economic benefits in any particular region (such as Florida) or in the United States. While the sales forecast for [REDACTED] indicates that his company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. 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. *Id.* at 890. For instance, he has not offered sufficient evidence that [REDACTED] would employ a significant population of workers in an economically depressed area or that his endeavor would offer a U.S. region or its population a substantial economic benefit through employment levels or business activity. Accordingly, the Petitioner's proposed work 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.

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. 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.