



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 20612853

Date: JUN. 14, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a managing director, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, 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: (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. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center determined that the Petitioner qualifies for the underlying classification, that his proposed endeavor has substantial merit, and that he is well positioned to advance his proposed endeavor. Nevertheless, the Director denied the petition, concluding that the evidence did not establish that the proposed endeavor is of national importance or that a waiver of the requirement of a job offer would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner reasserts his eligibility, arguing that the Director did not properly weigh the evidence and erred in the decision.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

## **I. LEGAL FRAMEWORK**

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 as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner stated on his Form I-140 that he intends to “perform quantitative analyses for investment programs affecting institutional investors and state-run pension funds.” His proposed endeavor includes creating an asset management firm in the United States to provide financial analytical services that will attract investment capital into the United States. Specifically, he intends to provide tailored investment programs and related management services to international institutional investors. These services include “origination and execution [of] U.S. investment deals through nationwide discovery of alternative investment assets.” In his proposed endeavor synopsis, the Petitioner stated that he “will employ financial analysts to perform research, analysis, forecasting, program management, and client relationship management to source American investments to Asian institutional investors” and that his long-term goal is to create a gateway for American and Asian investors to conduct their respective cross-border investment transactions. In the first three years of the Petitioner’s proposed endeavor, he plans to provide U.S. investment programs and acquisitions to established clients in order to derive immediate revenue for his asset management firm, which will then enable his firm to serve as an intermediary for drawing foreign investment to the United States. He identified three Korean-based prospective clients and the services he would provide to these institutional clients as a part of his proposed endeavor. The Petitioner’s job at the time of filing the Form I-140 petition was as a managing director of [REDACTED] Korean operations, which involved directing real estate programs for corporate and institutional clients. He stated that he plans to use the “skills, knowledge, and record of success that he accumulated throughout his career working for [REDACTED], [REDACTED], and [REDACTED]” in executing his proposed endeavor.

The Petitioner offered numerous explanations for how his proposed endeavor is nationally important and will have a broad impact. For example, he claimed that his proposed endeavor has a realistic potential to create significant economic and societal benefit by attracting foreign capital to the United States. In addition, he stated that because it will attract substantial investment capital to the United States, his proposed endeavor will benefit the economy, improve capital markets, address the sharp decline of foreign investment into the United States, and create employment.

In support, the Petitioner provided numerous media reports concerning the financial health of the United States and its economy in order to demonstrate how the decline of foreign investment in the United States has had a significant negative impact. He also submitted articles concerning how South Korea seeks foreign real estate and securities investments to improve their economy and finances. Further, he provided numerous letters of support from individuals working in the finance and investment industry both in government and in the private sector.

The Director issued a request for evidence (RFE), which informed the Petitioner that, among other deficiencies, the evidence did not establish the national importance of the proposed endeavor. Specifically, the Director noted that the evidence did not sufficiently establish that the endeavor would have a wider economic impact, create a substantial number of jobs, or offer contributions to the advancement of the financial industry. In his RFE response, the Petitioner provided a new support letter, an opinion letter evaluating the proposed endeavor, additional media articles and reports on finances and investments, and a more in-depth explanation of his proposed endeavor.

After a thorough review of the evidence, the Director concluded that it was insufficient to establish the national importance of the proposed endeavor because it did not demonstrate how the Petitioner's work would have an economic or job creation impact or affect the broader industry. The Director ultimately determined that the evidence did not show that benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. *Id.* at 890. We agree.

While we do not discuss each piece of evidence individually, we have reviewed and considered each one.<sup>1</sup> In our de novo review of the record, we conclude that the Petitioner has not established the national importance of his proposed endeavor. 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.* We also evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement by looking to evidence that documents the "potential prospective impact" of his work. To illustrate, "[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.

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<sup>1</sup> We note that the Director's decision describes the Petitioner's proposed endeavor as an "electrical engineer." While we acknowledge this as an error, because the Director correctly engaged in a discussion of the Petitioner's evidence, we find it to have been a harmless one.

We examined the letters initially submitted and the additional letters submitted in the Petitioner's RFE response. The authors of the letters praise the Petitioner's personal and professional achievements and qualifications. They also note the importance of the finance and investment field. However, most authors do not discuss the Petitioner's proposed endeavor or meaningfully demonstrate its national importance. For instance, [REDACTED] the vice president of the corporate management office of [REDACTED] did not discuss the Petitioner's proposed endeavor, but instead described how the Petitioner's services in 2012 helped [REDACTED] obtain favorable bond prices and attract additional investment capital. Although [REDACTED] stated that the Petitioner's strategy allowed [REDACTED] to overcome traditional barriers to the ability of South Korean companies to raise capital through bonds, the evidence of record is insufficient to support a finding that the Petitioner's services positively impacted the nation as a whole, rather than [REDACTED] specifically.

The South Korean news article that discussed the transaction explained [REDACTED] success and how the transaction may have influenced South Korea's credit rating, but the article did not mention the Petitioner as the specific individual who orchestrated the strategy behind it. While we acknowledge the four awards the Petitioner received from the Republic of South Korea's Ministry of Strategy and Finance commending the Petitioner on his contributions to the financial industry and the country's economy, the record does not include evidence showing that these awards are recognized beyond the presenting institution or indicative of influence on the field as a whole. Although the awards do briefly mention what made the Petitioner's contribution award-worthy, the record contains insufficient independent and objective evidence concerning how prestigious each award was, how many individuals competed for the award, or how the Ministry of Strategy and Finance determined who would receive the award. Even if we accept these awards as evidence indicative of the Petitioner's past impact in South Korea, this would not be evidence of how the Petitioner's proposed endeavor would impact the United States.

The author of another support letter, [REDACTED] chief executive officer of an Asian branch of a [REDACTED] private bank, offered his opinion that the Petitioner's proposed endeavor could attract international investors and generate a flow of foreign capital into the United States, but he did not suggest that the proposed endeavor would impact the nation at a level commensurate with national importance. Instead, he suggested that the beneficiaries of the foreign capital would be U.S.-based stakeholders who use the Petitioner's services.

[REDACTED] who serves as a director of global investment for a private securities company, submitted a letter containing his professional opinion of the proposed endeavor. He summarized generally accepted economic principles, as well as the effect that additional capital has on an economy and its job market to illustrate that the Petitioner's endeavor has the potential to benefit the economy and labor market on a general economic level. Specifically, [REDACTED] stated that the proposed endeavor's services will create new cross-border investment transactions and financial solutions which will confer benefits beyond simple infusion of capital into the economy. He described the alternative assets that the Petitioner plans to work with and how his proposed endeavor is structured so as to enable the Petitioner to cover a wide geographical region. Concerning the national importance of the proposed endeavor, [REDACTED] stated, in verbatim, the following:

The process required to originate an alternative investment program makes his proposed endeavor to have a national implication in a way of attracting foreign

investment capital into different regions of the United States including economically depressed areas . . . [The Petitioner] will help realization of unknown or overlooked value for the US company, business component, or projects taking place in various States of the nation . . . [The Petitioner's] endeavor could play a critical role for financing vital projects which in return provide previously unavailable commercial activities or infrastructure that would improve American welfare at large.

While we acknowledge [redacted] belief that the effects of the proposed endeavor will benefit the U.S. economy and job market, we conclude that his evaluation does not sufficiently support a finding that the proposed endeavor will have an impact broader than basic economic activity already has in general. We conclude that generalized conclusory statements that do not identify a specific impact in the field have little probative value. See *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. *Id.* See also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (expert opinion testimony does not necessarily purport to be evidence as to "fact").

[redacted] general counsel and managing director of a global investment company, offered his high opinion of the Petitioner and the potential benefits his proposed endeavor could provide. For example, he stated that the Petitioner will take "full advantage of his professional understanding of various asset types, geographies, and management strategies that are optimized for his foreign investor clients. His services will undoubtedly add remarkable value to the financial institutions that work with him . . . benefit[ing] both the American stakeholders looking to sell their assets as well as the buy-side investors." This letter suggests that the primary impact of the Petitioner's proposed endeavor will be for the benefit of foreign investor clients, the institutions that work with the Petitioner, American stakeholders looking to sell their assets, and the investors that buy the assets. Accordingly, we conclude that this letter does not support a finding that the Petitioner's endeavor stands to impact the United States at a level commensurate with national importance, as opposed to impacting the individual parties involved in the transactions.

In his RFE response and on appeal, the Petitioner frequently directs our attention to the reports and articles submitted in support of the importance of the proposed endeavor. While the additional articles and reports provide helpful background information, they discuss the economic and job market struggles as a result of the COVID-19 pandemic and possible solutions for its recovery. None of articles or reports in the record discuss the Petitioner's proposed endeavor or how it will have an impact so substantial as to rise to the level of national importance. While we acknowledge that the financial industry is important, that recognition does not necessarily establish the national importance of the Petitioner's 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.

Regarding his proposed endeavor, the Petitioner emphasized the nationwide reach of it by explaining that "an asset located one geography to another presents different scenarios on risk and return profile. For example, multi-unit residential complex in economically depressed area may be a better fit for a

given investor because of relatively less burden on making equity investment over similar asset type in near a metropolitan area” (errors in original). He provided context for his proposed endeavor’s impact to the economy by explaining his industry’s practices. The Petitioner further explained that new capital entering an economy would create additional demand for products and services, which would trigger suppliers to respond by increasing production, which then would require suppliers to hire more people and invest more to meet the increased levels of production. While we acknowledge and understand the basic effects of supply and demand on an economy, the Petitioner has not adequately supported his contention that his proposed endeavor will have significance rising to a nationally important level. Although he explains that his services would greatly benefit thousands of U.S. firms, he has not identified thousands of firms interested in his services, nor has he provided sufficient evidence to conclude that his proposed endeavor would operate on such a large scale. We acknowledge that any offer of goods or services has the potential to impact the economy; however, this fact alone is insufficient to establish that the services the Petitioner plans to offer will benefit the U.S. economy, labor market, or financial industry on such a scale as to rise to the level of national importance. For instance, he has not provided evidence of how the “spillover effect” or economic “chain reaction” that he expects his proposed endeavor to set off would be substantial enough to affect tax revenues or Gross Domestic Product (GDP).

The Director noted that the Petitioner did not provide sufficient evidence of any projected U.S. economic impact or job creation directly attributable to his proposed endeavor work. On appeal, the Petitioner claims that the Director merely considered the direct effects of his proposed endeavor and not the indirect impact. Upon review of the entire record, we conclude that the Petitioner has not provided sufficient evidence of direct or indirect impact. The Petitioner provided financial projections for his proposed endeavor, including the income and expenses his asset management firm will have in the next four years, as well as how many employees the Petitioner intends to hire. Although the Petitioner intends to directly create nine jobs for the people he will hire within his asset management firm, he has not explained how nine jobs would rise to the level of national importance or where these jobs would be located. Further, although he claimed that the proposed endeavor will create additional indirect jobs, he has not provided evidence of how this would occur. Instead, to support his contentions, he relies upon an explanation of how supply and demand functions in a capitalistic market. The Petitioner did not offer a foundation for his financial figures nor are they from an independent and objective source. He has not explained how he will achieve his projected level of income, which would necessarily depend on the number of institutional clients he plans to work with and their individual financial situations, as well as the location of the assets they seek to buy. As the record currently stands, these projections appear to be little more than conjecture.

Although the Petitioner argues that the Director did not weigh and consider the evidence properly and that the Petitioner need not specify an exact location for his asset management firm, we conclude otherwise. To illustrate using the Petitioner’s example, a South Korean investor may use the Petitioner’s services to locate and finance a purchase of a multi-unit residential complex in an economically depressed area in the United States. Here, the Petitioner requests that USCIS assume, without sufficient corroborating evidence, that through various economic and market forces, the events of such a purchase will confer a benefit to the United States on a scale that rises to the level of national importance. The Petitioner has not identified the location of the complex or the location of the Petitioner’s own asset firm, the interested parties, the location of the nine projected direct jobs, the location of any indirect jobs that will be created as a result of the complex or his firm, the tax

implications for those areas, or how the totality of the endeavor would bring revenue to those areas. We conclude that even if the proposed endeavor is not bound by geographic location, this would not absolve the Petitioner of his burden to provide evidence of the endeavor's claimed impact.

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. While the Petitioner's proposed endeavor may confer a benefit to the individual parties involved, the Petitioner has not established how these transactions or multiple transactions of this kind would impact the U.S. economy or financial industry at a level commensurate with national importance. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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 projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. See *Dhanasar*, 26 I&N Dec. at 890.

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. 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*, therefore, 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 second and third *Dhanasar* 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 established he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reason.

ORDER:      The appeal is dismissed.