



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

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

In Re: 10811891

Date: MAY 17, 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, 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 did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he had not 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 additional documentation and a brief asserting that he is eligible for classification as a member of the professions holding an advanced degree and 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.

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).<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 foreign national’s proposed endeavor has both substantial merit and national importance; (2) that

<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).

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) 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.<sup>3</sup>

## II. ANALYSIS

### A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The record supports the Director's determination that the Petitioner's "Physical Education Licentiate" diploma (2006) from [REDACTED] in Brazil is the foreign equivalent of a U.S. baccalaureate

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

degree in physical education. The issue on appeal is whether the Petitioner has at least five years of progressive post-baccalaureate experience in his specialty, entrepreneurship.<sup>4</sup>

As evidence of his work experience, the Petitioner initially offered letters discussing his work as a physical education teacher, physical education coordinator, and soccer referee, but this experience did not relate to his specialty of entrepreneurship. He also provided amendments to the “Articles of Association” for his partnerships involving [redacted] (October 2011), [redacted] (January 2017), [redacted] (March 2017), and [redacted] (March 2016). In addition, the Petitioner submitted documentation relating to his formation of [redacted] (2016), [redacted] (2018), [redacted] (2019), [redacted] (2016), and [redacted] (2018). The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B), however, specifies that the evidence of progressive experience must be “in the form of letters from current or former employer(s).” The information relating to the aforementioned companies is not sufficient to demonstrate that the Petitioner has at least five years of progressive post-baccalaureate experience in entrepreneurship.

Without further information and evidence from his employers, the Petitioner has not established that he has at least five years of progressive post-baccalaureate experience in entrepreneurship to constitute the equivalent to an advanced degree in that specialty. See 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, the record supports the Director’s determination that the Petitioner has not established that he qualifies as a member of the professions holding an advanced degree.

#### B. Exceptional Ability

In denying the petition, the Director determined that the Petitioner fulfilled only the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). The Petitioner’s appellate submission does not contest the Director’s findings or maintain that he satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). Without offering any arguments or evidence to overcome the Director’s findings, the Petitioner has not established that he satisfies at least three of the criteria and has achieved the level of expertise required for exceptional ability classification.

#### C. National Interest Waiver

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. 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 that he intends to continue his “career in the United states as an entrepreneur, specifically by managing and developing

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<sup>4</sup> The Petitioner stated that he intends to continue his “career in the United states as an entrepreneur, specifically by managing and developing national and international companies.” In addition, Part 6 (“Basic Information About the Proposed Employment”) of the Immigrant Petition for Alien Worker, Form I-140, lists the Petitioner’s job title as “Entrepreneur.”

national and international companies.” He asserted that his proposed endeavor involves “facilitating and generating new businesses,” as well as providing “business services to U.S. companies, institutions, and individuals in need of expert advice in business management, marketing strategies, business solutions, business development, and innovation development.” The Petitioner further indicated that he plans to devote his services and financial resources to [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED]. He also explained that he plans “to embark on a major expansion of the [REDACTED] network,” including three stores in the United States.<sup>5</sup>

The record includes information about immigrants’ contribution to the U.S. economy, the restaurant industry outlook, immigrant entrepreneurs as business creators, and the value of entrepreneurs to our country’s economy. In addition, the Petitioner provided articles discussing immigrant entrepreneurs’ economic contributions, entrepreneurs’ involvement in promoting a more inclusive economy, and the entrepreneurial legacy of immigrants and their children. He also submitted information about entrepreneurs’ role in job creation and innovation, U.S. restaurant industry sales, the economic contribution of immigrant-launched businesses, and immigrant tax contributions and spending power. The record therefore shows that the Petitioner’s proposed work as a food service entrepreneur and business advisor 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.

With the appeal, the Petitioner submits letters from [REDACTED] [REDACTED], and [REDACTED] expressing interest in his business consulting services. In addition, the Petitioner offers letters of support from [REDACTED] [REDACTED] (a Brazilian attorney), [REDACTED] and [REDACTED]<sup>6</sup> attesting to the Petitioner’s business skills, but these letters do not explain how his proposed work is of national importance. The Petitioner’s knowledge, skills, and experience 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.

In his appeal brief, the Petitioner asserts that his proposed endeavor stands to “support the U.S. domestic job market, as it will promote the direct and indirect creation of jobs for U.S. citizens.” He contends that

<sup>5</sup> The Petitioner notes that he is “the owner of [REDACTED] a restaurant serving authentic Japanese cuisine, located in the city of [REDACTED] FL. [REDACTED] also in [REDACTED] is a new concept in Japanese cuisine, serving up sushi and poke bowls to a growing customer base in recent years.”

<sup>6</sup> The appellate submission includes commercial subleases for the Petitioner’s two restaurants at [REDACTED] [REDACTED]

his undertaking “not only broadly enhances U.S. commercial interests and prompts overall economic enrichment, but it also positively impacts the domestic job market.” The Petitioner further argues that his proposed work “fuels a major commercial market, which, in turn, directly contributes to national economic output, as well as prioritizes national interests, such as the domestic job market.” In addition, he claims that his endeavor “will produce significant national benefits, due to the ripple effects of his professional activities.” The Petitioner also states that his undertaking will benefit our country through helping “increase the flow of money in the U.S. on a national level, which will contribute to U.S. gross domestic product (GDP).”

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. Although the Petitioner’s statements reflect his intention to provide business and financial resources to his companies and advisory services to 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 companies and clientele to impact his field or the restaurant industry 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. 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 regional or national economy resulting from the Petitioner’s business projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. 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

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. Furthermore, 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.