



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

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

In Re: 26375695

Date: APR. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an environmental sustainability consultant, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or, alternatively, as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that, while the Petitioner's proposed endeavor has substantial merit, the record did not establish that the endeavor has national importance or that it would benefit the United States to waive the requirements of a job offer and, thus, of a labor certification. 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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Profession is defined as 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 into the occupation.¹ 8 C.F.R. § 204.5(k)(3).

¹ Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).² Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.³ If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term “national interest,” *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion⁴, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.⁵

II. ANALYSIS

The Petitioner asserts that he is both a member of the professions holding an advanced degree and an individual of exceptional ability. While neither the Director’s request for evidence nor the Director’s decision address the Petitioner’s eligibility for the EB-2 classification, the record includes evidence to establish that the Petitioner holds the foreign equivalent of a U.S. bachelor’s degree in business administration. Upon review of the record, we conclude that the Petitioner does not have the required five years of progressive experience in the specialty of environmental sustainability, nor does he qualify as an individual of exceptional ability.

A. Eligibility as a Member of the Professions Holding an Advanced Degree

The Petitioner intends to operate a company providing consultancy services concerning environmental sustainability to furniture. The record includes academic records, letters from previous employers, and a credentials evaluation demonstrating that the Petitioner has attained the foreign equivalent of a United States bachelor’s degree in business administration.

Regarding the required five years of progressive experience in the specialty of environmental sustainability, the Petitioner submitted evidence of at least five years of post-baccalaureate experience.

² If these types of evidence do not readily apply to the individual’s occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

³ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

⁴ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

⁵ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

Eligibility for the EB-2 classification requires an individual claiming to hold the equivalent of an advanced degree based on a bachelor's degree and post-baccalaureate experience to demonstrate that the work experience was in the specialty.⁶ While the record shows that the Petitioner has experience in business administration, the record does not contain evidence showing that he has five years of post-baccalaureate progressive experience in the specialty of environmental sustainability. On appeal, the Petitioner states the following:

[redacted] has firsthand knowledge and awareness that the regard for the environment is one of the fundamental elements of a successful business strategy. That was the foundation of his success when he established and developed [redacted] in Brazil, and what will help to implement the U.S. companies through consulting services.

Although the Petitioner claims to have experience operating a design business in Brazil, the record does not include documentation related to his company or any probative evaluation of his work in the specialty of environmental sustainability.⁷ And while the Petitioner claims expertise in successfully operating businesses using environmentally sustainable methods, the record documents only his employment performing managerial duties at a hospital and at a sports facility; there is no documentation of work performed for his own business or for other businesses related to environmental sustainability. In addition, the record does not include evidence to demonstrate that the Petitioner's intended occupation is a profession requiring the attainment of at least a baccalaureate degree for entry. The Petitioner has not established eligibility for the EB-2 classification as a member of the professions holding an advanced degree.

B. Eligibility as an Individual of Exceptional Ability

As noted above, to demonstrate eligibility as an individual of exceptional ability, a petitioner must initially submit documentation that satisfies at least three of six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A).

The record shows that the Petitioner has the foreign equivalent of a baccalaureate degree in business administration. The record also includes several training certificates related to courses in business, management, and marketing. The record satisfies this criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B).

⁶ See 8 C.F.R. § 204.5(k)(3)(i)(B).

⁷ The Petitioner must support his assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The record includes letters from previous employers attesting to the Petitioner's employment as an administrator at a hospital and a sports complex. The record does not include evidence of the Petitioner's experience in an occupation related to environmental sustainability. The record does not satisfy this criterion.

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

The Petitioner does not claim to meet this criterion, and the record does not include any licenses or certifications related to his proposed occupation. Therefore, we deem this issue to be waived, and we will not address this criterion further.⁸

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner does not claim to meet this criterion, and the record does not include documentation of his salary or remuneration for services he has provided. Therefore, we deem this issue to be waived, and we will not address this criterion further.⁹

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Petitioner does not claim to meet this criterion, and the record does not include evidence relating to his membership in any professional associations. Therefore, we deem this issue to be waived, and we will not address this criterion further.¹⁰

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner does not claim to meet this criterion, and the record does not include evidence relating to this criterion. Therefore, we deem this issue to be waived, and we will not address this criterion further.¹¹

The Petitioner has not established that he meets three of the six evidentiary criteria under 8 C.F.R. 204.5(k)(3)(ii), and so he has not met the initial requirement to demonstrate his eligibility as an individual of exceptional ability. Thus, we need not conduct a final merits determination of whether he is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

In sum, the Petitioner has not established eligibility for the EB-2 classification as a member of the professions holding an advanced degree or, alternatively, as an individual with exceptional ability. Therefore, he is ineligible for a national interest waiver.

⁸ See, e.g., *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

⁹ *Id.* at 762, 767.

¹⁰ *Id.* at 762, 767.

¹¹ *Id.* at 762, 767.

C. National Interest Waiver

Even if the Petitioner had established that he is eligible for the underlying EB-2 classification, which he has not, he has not demonstrated that he merits a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. The first prong of the *Dhanasar* precedent decision, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner’s proposed endeavor is to provide consulting services related to sustainable furniture manufacturing and distribution; he states that his work will improve manufacturing processes in the United States and impact the environment globally. The Director determined that, while the Petitioner’s proposed endeavor has substantial merit, the Petitioner did not establish that the endeavor is of national importance. The Director concluded that the Petitioner’s proposed endeavor would not impact the environmentally sustainable manufacturing industry more broadly, as any impact would not sufficiently extend beyond the Petitioner’s consultancy company or its clients. The Director also concluded that the Petitioner’s plan to hire full-time employees and to create indirect jobs would not offer economic benefits that extend beyond the community to significantly impact the industry. The Director determined that the Petitioner did not establish eligibility for a national interest waiver as a matter of discretion.

On appeal, the Petitioner submits an article about sustainability consulting, an article discussing sustainable manufacturing practices, and a brief. In his brief, the Petitioner contends that the Director abused her discretion in denying the petition. The Petitioner reasserts the national importance of his endeavor, stating that his company will provide services to small and medium sized businesses. He states, “Sustainable sourcing of raw materials will in turn have a global implication within this field as logistics connect products and supplies from around the world.” The Petitioner speaks generally about the use of sustainable raw materials and recycled materials to address the problem of waste in the furniture industry. He also discusses how his company will create closed-loop cycles for furniture manufacturers that will allow the United States to transition in this field from a linear economy to a circular economy emphasizing the reuse of raw materials. The record, however, does not include documentation of specific projects his company might undertake with manufacturers to demonstrate the plausibility of his endeavor. Unsupported statements are insufficient to carry the Petitioner’s burden of proof; the Petitioner must support his assertions with relevant, probative, and credible evidence.¹² He further states the following (quoted as written):

[redacted] contribution into growth of sustainable manufacturing will causes an economic chain reaction that (a) generates a net gain in direct sales and jobs due to the promotion of the industries’ products and services, (b) generates indirect sales and jobs among the first level suppliers to the industries that incur the advertising expenditures, and (c) generates indirect sales and jobs among all other levels of economic activity as

¹² See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

the sales ripple throughout the economy. Therefore, his endeavor has significant potential to employ U.S. workers as well as substantial positive economic effect.

The Petitioner asserts that his endeavor will promote the initiatives outlined in the Biden-Harris Administration's Proposed Buy American Rule,¹³ which followed President Biden's signing of Executive Order 14005.¹⁴ The Petitioner states that his "knowledge and experience will assist U.S. manufacturers in finding sustainably sourced and certified materials locally while facilitating American supply-chain and business to business sales." Although the Petitioner's endeavor may relate to elements of the executive order and the proposed rule, these were signed and issued, respectively, in 2021, while the petition was filed in 2020.¹⁵

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." *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.

The record includes industry reports and articles related to environmental sustainability, immigrant entrepreneurship, foreign direct investments, exports, and small business statistics in Florida,¹⁶ where the Petitioner intends to operate his company. The Petitioner claims expertise in the field of sustainable furniture manufacturing based on a company that he started in Brazil in 2018,¹⁷ and the record includes photos of rooms in residences, offices, and business spaces that he states his company designed. Although the record does not include additional documentation related to his company in Brazil, the record includes evidence showing that he has registered his new company in the United States and opened a business banking account with a balance of \$1,400.00 in January of 2020. The Petitioner estimates paying out \$605,873 in salaries over five years of operation and directly employing four people.

¹³ Fact Sheet: Biden-Harris Administration Issues Proposed Buy American Rule, Advancing the President's Commitment to Ensuring the Future of America is Made in America by All of America's Workers (July 28, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/28/fact-sheet-biden-harris-administration-issues-proposed-buy-american-rule-advancing-the-presidents-commitment-to-ensuring-the-future-of-america-is-made-in-america-by-all-americas/>.

¹⁴ Executive Order on Ensuring the Future is Made in All of America by All of America's Workers (January 25, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-ensuring-the-future-of-america-is-made-in-america-by-all-of-americas-workers/>.

¹⁵ See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg'l Comm'r 1971), in which the Immigration and Naturalization Service (legacy INS) held that noncitizens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

¹⁶ As stated herein, in determining national importance, the relevant question is not the importance of the industry or profession in which the Petitioner will work; we focus instead on the specific endeavor that the Petitioner proposes to undertake. *Id.* at 889.

¹⁷ 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. Although the Petitioner's statements reflect his intention to educate small and medium sized manufacturing companies on environmental sustainability and provide guidance on shifting to sustainable practices, he has not provided 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.¹⁸ Here, we conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clientele to impact the furniture manufacturing industry at a level commensurate with national importance.

In addition, the Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. Specifically, he has not shown that his company's future staffing levels, business activity, associated tax revenue, and international financial initiatives stand to provide substantial economic benefits to Florida or to the United States. The financial projections provided by the Petitioner do not demonstrate that the benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*.¹⁹ In addition, although the Petitioner asserts that his company will hire U.S. employees, he has not provided evidence to establish that the area in which the company will operate 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, business activity, or tax revenue. The Petitioner claims, “By promoting the accessibility to sustainable manufacturing consulting services for [businesses] nationwide and improving manufacturing processes, [redacted] will have substantial impact on the entire field.” However, the Petitioner has not shown that the prospective impact of the consultancy services provided by his company will have a significant impact on the furniture manufacturing industry. The Petitioner has not demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The record does not establish the national importance of the 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. Because the identified basis for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework.²⁰

¹⁸ See *Dhanasar*, 26 I&N Dec. at 893.

¹⁹ *Id.* at 890.

²⁰ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); 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

The Petitioner has not established his eligibility for the EB-2 classification, nor has he demonstrated that he is eligible for a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.