



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

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

In Re: 28048589

Date: AUG. 31, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a legal analyst and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *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 the record did not establish that the Petitioner qualifies for a national interest waiver. 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

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. Section 203(b)(2)(B)(i) of the Act.

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.” *Id.* 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 discretion,<sup>1</sup> grant a national interest waiver if the petitioner demonstrates that:

---

<sup>1</sup> *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).

- 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.<sup>2</sup>

## II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record supports that determination. The remaining 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.

### A. Substantial Merit and National Importance

The Petitioner intends to expand his current business providing law consultancy services in Brazil into the United States as part of a partnership. The Petitioner initially provided a definitive statement that includes the following description of his company:

In a nutshell, [the company] is focused on consultancy and legal services with a major focus on corporate law and regulation. Overall legal consultancy, advisory in tax and civil laws, and hands-on involvement in the production of trade contracts, in general, will be among the many services offered by [the company's] portfolio. My company's services will help U.S. companies start doing business abroad or consolidate and secure the position of those that already operate in Brazil and other countries.

My company's primary target market (pilot market) will be the state of California with an expansion plan to Utah and Arizona. I relied on the U.S. government database from Small Business Administration – SBA HUBZone to define my location. The HUBZone program fuels small business growth in historically underutilized business zones. The decision to locate the business here arose from my desire to take a stand and create a positive impact, generating jobs for U.S workers in underutilized areas in the state of California with an expansion plan to Utah and Arizona, improving the wages and the working conditions of U.S workers, helping the local community to attract investments in the region, and thus encouraging economic development.

Moreover, a financial forecast shows that [the company] is expected to generate \$2,745,000 in annual revenues for Year 5, with \$700,000 paid in total taxes over those 5 years. During this same 5-year period, I intend to generate a total of 36 jobs, with a total investment of \$1,000,000 reinvested into the company from retained earnings and an initial ignition capital of \$150,000.

The Director determined that the Petitioner's endeavor to provide consultancy services and contribute to the U.S. economy has substantial merit. The Director further determined that the endeavor has national importance. The Director's decision summarizes the Petitioner's intentions, stating that the

---

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

“proposed endeavor will help U.S. companies start doing business abroad or consolidate and secure the position of those that already operate in Brazil and other countries.” The decision lists the evidence submitted that informed the Director’s determination: certificates of education and experience, support letters, a business plan, a letter of intent, and “[o]ther material.”

The first prong, 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.

While we agree that the Petitioner’s proposed endeavor has substantial merit, we do not agree with the Director’s determination that the endeavor has national importance. Because we conclude below that the Petitioner did not establish his eligibility for a national interest waiver under the second prong of the *Dhanasar* framework, we need not fully address the Petitioner’s eligibility under the first prong. However, we will discuss the issue to inform the Petitioner that this should be addressed in any future national interest waiver proceedings.

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. 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. Further, 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.

The Petitioner has not demonstrated that the endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. The Petitioner initially submitted a business plan that describes his intention to establish and expand his business in HUBZones. The goal of the Small Business Administration’s HUBZone Program<sup>3</sup> is to fuel small business growth in economically depressed geographic areas, and the business plan states that his company intends to focus on servicing the following cities: [redacted] California; [redacted] Utah; and [redacted] Arizona. The business plan, however, does not clarify how the anticipated creation of 36 jobs by the company’s fifth year would have substantial positive economic effects for those areas. In addition, the business plan does not describe what businesses or industries the Petitioner has identified within the intended HUBZones as potential clients in order to achieve revenue targets totaling \$2,745,000 by the company’s fifth year of operation. Also of note is the fact that, while the Petitioner emphasizes his expertise in facilitating cross-border trade and that he can use it “to make the U.S. market more attractive to foreign businesses and/or investors,” he does not explain how he would incentivize foreign entities to invest in businesses in economically depressed areas. Further, while the business plan provides a table depicting investments of \$75,000 each from

---

<sup>3</sup> See <https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program>.

the Petitioner and his business partner to create the company in the U.S., the record does not include documentation to demonstrate the availability or existence of these investment funds; the record includes only formation documents for the Petitioner's partnership in Brazil and a contract from 2020 citing the sources of funds intended for use as investments into that company. Further, while the business plan anticipates reinvestment into the company from retained yearly earnings, the growth forecast figures do not appear to originate from objective sources; absent probative evidence to show the realistic potential of the business operate at all, it is not evident that the company will generate revenue to create jobs, to expand, or to otherwise notably impact the economies of the cities in which it intends to operate.<sup>4</sup> 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 company would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

While the Petitioner's statements reflect his intention to provide consultancy services for his business clients, 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. The Petitioner's statements and business plan outline generalized descriptions of the legal consultancy services that the Petitioner intends to provide; neither an expert opinion letter nor recommendation letters include insight into how any specific endeavor proposed by the Petitioner is one that rises to a 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 legal consulting field or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner has not established the national importance of his proposed endeavor. We will withdraw the Director's finding on this issue. In any future national interest waiver proceedings, the Petitioner must establish that he qualifies under the first prong of the *Dhanasar* framework.

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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. *Id.* at 890.

The Director determined that the Petitioner did not establish that he is well positioned to advance his proposed endeavor. The Director's decision states that the documentation of the Petitioner's education and the letters of support from former employers and clients do not provide sufficient evidence of the Petitioner's professional experience at a level that demonstrates that he is well positioned to advance the proposed endeavor.

---

<sup>4</sup> The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 at 376.

On appeal, the Petitioner alleges that, rather than applying the governing standard of review, preponderance of the evidence,<sup>5</sup> the Director “imposed novel substantive and evidentiary requirements beyond those set forth in regulations.” Although the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not further explain or identify any specific instance in which the Director denied his petition applying a standard of proof other than that of preponderance of the evidence. The Petitioner submits a brief in which he reiterates, through his attorney, his education and experience. The brief also states the following with regard to the letters of recommendation:

[The Director indicates that] these letters do not highlight the importance of the Appellant’s work in the US economy or profession. In order to prove the contrary, I would revert your attention back to the skills and expertise of the Appellant. The Appellant has been a Managing Partner at [his company in Brazil] and achieved immense success in the legal field.

The brief goes on to describe systems that the Petitioner devised to improve efficiencies and reduce client absences from court hearings. Upon review, it is evident that the details in the record concerning the Petitioner’s legal and entrepreneurial accomplishments are found almost entirely within documentation generated by the Petitioner or his attorney; this documentation includes cover letters, the Petitioner’s definitive statement, his business plan, his resume, and what appears to be pages from his company’s website in Brazil promoting his plans to expand to the United States. Letters submitted as evidence of the Petitioner’s work experience following his bachelor’s degree provide only an overview of his duties. Three letters of recommendation submitted in response to a request for evidence speak generally of the quality of the Petitioner’s work; while the authors describe their businesses and indicate that the Petitioner provided legal services to those businesses, they do not elaborate on the services provided or illuminate any specific accomplishments that would support the Petitioner’s qualifications as an individual well positioned to advance a specific proposed endeavor of national importance. Also notable is the fact that, while evidence of investor interest in an endeavor may serve to demonstrate that a petitioner is well positioned to advance it, these letters are non-committal and only generally refer to the Petitioner’s interest in providing legal services in the United States; they are not supported by probative evidence to demonstrate genuine interest to invest in the Petitioner’s business. The record also includes industry reports and articles discussing the legal profession and entrepreneur statistics; this information does not provide probative evidence that the Petitioner is well positioned to advance his proposed endeavor.

The record does not establish the Petitioner is well positioned to advance the proposed endeavor as required by the second prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. 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 *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); 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).

---

<sup>5</sup> See *INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place).

### III. CONCLUSION

The Petitioner has not met the requisite first and second prongs of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

**ORDER:** The appeal is dismissed.