



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

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

In Re: 28079336

Date: DEC. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a software developer, seeks employment-based second preference (EB-2) 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest. 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. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.<sup>1</sup> 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

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<sup>1</sup> 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,<sup>2</sup> 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.

## II. ANALYSIS

The Acting Director determined that the Petitioner was a member of the professions holding an advanced degree.<sup>3</sup> The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner states that he is a software engineer and developer with more than 35 years of experience, specializing in “logistics, financial systems, neural networks and deep learning.” His proposed endeavor is to help “business clients execute and develop effective software development while providing a positive economic impact for the local, regional and national economy.” He intends to hire and train professionals through his company, [REDACTED], to offer “specialized services as a software and systems development consultant to companies in many sectors, including investment and financial markets in the U.S.,” as well as to Brazilian companies investing in the United States.

With the initial filing the Petitioner submitted evidence of his education and experience, a personal statement describing his proposed endeavor and claimed eligibility for a national interest waiver, and a business plan. He also provided recommendation and support letters, evidence of publications and presentations he authored, as well as an expert opinion. He submitted industry reports and articles discussing shortages of technical talent, the role of software development in business growth, the importance of small businesses in the U.S. economy, the financial services industry, and contributions of immigrants to the U.S. economy. In his business plan, the Petitioner states that his proposed endeavor will grow his company to 24 clients and 15 employees within five years, reaching a gross profit of approximately \$500,000.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Petitioner’s response to the RFE includes an updated business plan dated September 2022, additional industry reports and articles, and evidence that attracting talent in Science, Technology, Engineering and Mathematics (STEM) to the United States is a national initiative.

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<sup>2</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).

<sup>3</sup> The record demonstrates that the Petitioner holds the equivalent of a U.S. master’s degree awarded in 1999. See 8 C.F.R. § 204.5(k)(3)(i)(A).

After reviewing the Petitioner's RFE response, the Acting Director determined that the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has substantial merit. However, she concluded that the Petitioner had not demonstrated that his proposed endeavor had national importance, that he was well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Acting Director stated that the record did not demonstrate that the Petitioner's proposed endeavor will have a regional or national impact at a level consistent with having national importance, or that the Petitioner's work will have broader implications in his field of endeavor, going beyond his own business and clients. The Acting Director further noted that the letters of recommendation do not demonstrate that the Petitioner's accomplishments would have any impact or influence in the field of computer science beyond the local level or the Petitioner's clients. Additionally, the Acting Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of his prospective contributions to the United States, an urgent national interest in his contributions, the potential creation of jobs, or that his self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief and asserts that the Acting Director's decision contains "clear error of judgment and statements not based upon consideration of relevant factors and evidence on record and contradictions and inconsistencies" resulting in an abuse of discretion. The Petitioner asserts that the Acting Director ignored evidence and did not consider all the benefits of his proposed endeavor. In his brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that he merits a national interest waiver.

#### A. Substantial Merit and National Importance

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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

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 Id.* 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 Petitioner submits articles and industry reports describing the importance of software development to the success of small businesses, as well as the general shortage of technical talent in the United States.<sup>4</sup> An undated article from the BoostSuite titled "22 Fascinating Florida Small

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<sup>4</sup> While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

Business Statistics” provides data on the number and success rate of small businesses in the state. The Petitioner does not explain how the article demonstrates that his specific proposed endeavor is of national importance. Similarly, a November 2020 article from the Pew Research Center titled “The pace of Boomer retirements has accelerated in the past year,” gives statistics on retirement rates in various sectors, but does not address the national importance of the Petitioner’s specific proposed endeavor or explain the relevance of this data to software development for small businesses. An article from ICTSD.org dated January 2022 and titled “How Many Businesses Are Sustainable,” discusses the importance of having a sustainability strategy in business. However, the article provides general information and does not focus on the Petitioner’s specific proposed endeavor.

When 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 Matter of Dhanasar*, 26 I&N Dec. at 889. Much of the Petitioner’s evidence relates to small businesses generally, rather than his specific proposed endeavor. Although we agree that STEM is important to the sustainability of small businesses’ contributions to the U.S. economy and may be the subject of national initiatives, we conclude that this does not necessarily establish the national importance of the Petitioner’s specific proposed endeavor. Even considering the articles and reports, collectively and in the totality of circumstances, the record contains insufficient information or evidence regarding the Petitioner’s proposed endeavor to show broad potential implications demonstrating national importance. As noted above, the Acting Director determined the endeavor has substantial merit, and we agree. However, the question we are examining here is national importance.

The Petitioner also submits his business plan to support the national importance of his proposed endeavor. As noted, to establish national importance, the Petitioner must demonstrate the proposed endeavor’s impact. 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.* The Petitioner states that his proposed endeavor “contributes to the enhancement of business organizational processes, thereby benefitting the U.S. economy as a whole.” He provides statistics regarding the number of small businesses in Florida, the market for his proposed endeavor, and notes that small businesses support the U.S. economy and create new jobs. However, this data does not support the Petitioner’s assertion that his proposed endeavor to improve the efficiency of small businesses in Florida will have a national-level impact. Additionally, the projections of the Petitioner’s company’s job creation and profit as stated in his initial and September 2022 business plans are not supported with sufficient independent, objective evidence.

The Petitioner also states in his business plan that he will “target Brazilian businesses that want to expand their operations to the U.S. [... by utilizing] his reputation which is well-known in Brazil.” However, he does not support his assertion that this aspect of his proposed endeavor will “result in the expansion of the U.S. economy.” The evidence does not suggest that the Petitioner’s skills differ from or improve upon those already available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner’s experience will reach beyond benefitting his own company and clients or have broader implications within the field of software development. The record does not establish that his proposed endeavor stands to impact the field as a whole.

The Petitioner also submits an expert opinion prepared by [REDACTED] [REDACTED] as well as recommendation letters praising the Petitioner's education, experience, past success, personal qualities, and the results he achieved. However, these qualities relate to the second prong of the *Dhanasar* framework, that the individual is well-positioned to advance their proposed endeavor, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the Petitioner's specific endeavor has national importance under *Dhanasar*'s first prong.

We acknowledge that the expert opinion includes an analysis of the national importance of the Petitioner's proposed endeavor. In his analysis [REDACTED] discusses trends in the information technology industry in both the United States and Brazil. He summarizes that, based on the Petitioner's experience and knowledge of the business environment in Brazil, "there is no doubt that [the Petitioner] would work in the United States in an area of substantial merit and national importance." However, [REDACTED] does not describe or analyze the Petitioner's specific proposed endeavor. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinion is of little probative value as it does not meaningfully address the details of the Petitioner's proposed endeavor and why it would have national importance. [REDACTED] does not elaborate on how the Petitioner's proposed endeavor will have a prospective impact on the United States, including the national or global implications on mining operations, the potential to employ U.S. workers, or the positive economic effects.

The Petitioner asserts that the Acting Director did not consider the evidence of the benefits of his proposed endeavor and states that the decision includes "contradictions and inconsistencies." The Petitioner does not specifically identify the statements he asserts are contradictory or inconsistent. On appeal, the Petitioner relies upon the evidence he previously submitted. While we acknowledge the Petitioner's appellate claims that the Acting Director did not duly consider certain pieces of evidence, we note that the decision discusses each of the claimed pieces of evidence the Petitioner's lists in his brief. Nevertheless, we address them again herein. The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the trends in information technology. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs.<sup>5</sup> See *INS v. Bagamasbad*, 429 U.S. at 25.

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<sup>5</sup> Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Acting Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national

### III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in 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.

**ORDER:** The appeal is dismissed.

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importance, that he was well-positioned to advance the proposed endeavor, or 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. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response and does not provide any new evidence. The Acting Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner met the three *Dhanasar* factors and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that he meets all of the three *Dhanasar* prongs.