



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

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

In Re: 29382782

Date: DEC. 14, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur, 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 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal.

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.” 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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

¹ *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 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 Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. 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 conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner initially indicated that he intends to work as an entrepreneur establishing his U.S.-based company, [REDACTED]. He stated that “[REDACTED] is a new concept E-store and used car retail franchise designed to offer a portfolio focused on low-income owners. . . . The company will offer a unique sales experience, with good customer service support and a team of analysts to help target customers with finance and loans.”

The record includes the business plan for [REDACTED]. In section 1.3, Incorporation, the business plan lists the “Company Location” as [REDACTED], Texas” (page 6) while section 3.4 states that “[t]he company is incorporated in the State of Florida” (page 14).² The record, however, does not contain corroborating evidence of [REDACTED] incorporation in either Florida or Texas. The business plan includes industry and market analyses, information about his company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner’s education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner’s business plan anticipates that his company will employ 14 personnel in year one, 26 in year two, 45 in year three, 81 in year four, and 143 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, while his plan offers revenue projections of \$840,308 in phase one; \$1,716,628, \$3,282,723, and \$6,432,685 in phase two; and \$12,577,832 in phase three, he did not adequately explain how these sales forecasts were calculated.

In response to the Director’s request for evidence (RFE), the Petitioner stated:

I intend to continue my career in the United States as an Entrepreneur, specifically focusing on my own business, [REDACTED]. My company is a new concept E-store and used car retail franchise designed to offer a portfolio focused on low-income earners. The customer data analysis and massive retail demand for used cars since the pandemic has created a once in a generational opportunity for low cost and tech-based auto retailers.

The RFE response included company formation documents for [REDACTED]. This company was established as a limited liability company in [REDACTED], Texas in 2023. The Petitioner does not explain the relationship between [REDACTED] and [REDACTED] or his plans for the latter company.

² The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regardless, [redacted] was formed after the petition's filing date.³ Eligibility must be demonstrated at the time of filing the benefit request. *See* 8 C.F.R. § 103.2(b)(1), (12).

The Petitioner presented information about the occupations of “Chief Executives” and “Top Executives,” immigrant entrepreneurs as drivers of economic growth in the pandemic recovery, the results from the “Fortune/Deloitte CEO Survey,” foreign direct investment in the United States (FDI), the reasons why competent management is undervalued, and the economic principles of FDI. Additionally, the record includes articles discussing the value of entrepreneurship, ways operational innovation can transform a company, the role of human resources in fostering global competence, operations management, the effect of FDI on the U.S. economy, the reasons start-up companies fail and how their founders can recover, and Walmart's business challenges in Brazil. The Petitioner also submitted information about the occupations of General and Operations Managers, the history and future of operations, the effect of international companies on the U.S. economy, the benefits of international investment, the global talent crunch, the reasons why young managers are in a nonstop job hunt, and challenges faced by large companies attempting to expand internationally. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

Furthermore, the Petitioner provided letters of support from G-N-A-M-, U-F-A-J-, N-B-M-, W-S-O-, A-N-, and D-W- discussing his business capabilities and experience. The Petitioner's skills, knowledge, and prior work in his field, however, 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.

The Petitioner also submitted an “Expert Opinion Letter” from Dr. V-L-, Associate Professor of Marketing at T-S-U-, in support of his national interest waiver. Dr. V-L- contends that the Petitioner's proposed work is of national importance because the generic occupation of entrepreneur, U.S. small businesses in general, and our country's bilateral trade relationship with Brazil stand to contribute to our nation's economy. The issue here, however, is not the national 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.” *Id.* at 889. The letter from Dr. V-L- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work operating a used car dealership offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not demonstrated that his undertaking “stands to sufficiently extend beyond his own endeavor in the used auto sales field more broadly at a level commensurate with national importance.” The Director also indicated the Petitioner had not shown that his proposed work “has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation.”

³ The Form I-140 petition in this matter was filed in June 2021.

On appeal, the Petitioner contends that his proposed endeavor has national importance because it “will have a significant positive economic impact, such as generating investment and U.S. tax dollars, creating jobs for U.S. workers, or contributing to a healthy workforce.” He indicates that his undertaking stands “to help the U.S. stay competitive by bringing competitive services, helping develop the country, and producing income for the U.S. economy.” The Petitioner further asserts that his proposed endeavor stands to affect the national economy by “offering economic convenience and agility” to “companies in the automotive field,” “promoting growth and expansion and driving change with innovation,” “stimulating the domestic job market,” and generating “new jobs for American workers.” The Petitioner also cites to information from public policy organizations, news media, and U.S. federal agencies to show the overall importance of immigrant entrepreneurship, but he has not demonstrated how operating a used car dealership as contemplated by his proposed endeavor rises to a level of national importance.

In addition, the Petitioner mentions a “shortage of business professionals” in the United States. We are not persuaded by the argument that the Petitioner’s proposed endeavor has national importance due to the shortage of professionals in his field. Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

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.

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. While the Petitioner’s statements reflect his intention to provide used car dealership services to future customers, 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 Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field, the automotive retail industry, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown 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. Specifically, he has not demonstrated that his company’s future staffing levels and business activity stand to provide substantial economic benefits in Texas, Florida, or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence

indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his endeavor stands to generate jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers Texas, Florida, or the United States a substantial economic benefit through employment levels, tax revenue, or business activity.

For the aforementioned reasons, 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. Since this issue is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. 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 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.