



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

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

In Re: 29060606

Date: DEC. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a project manager and entrepreneur in the field of technology transfer, 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.

The Director of the Texas Service Center denied the petition, concluding that, although the record demonstrates the Petitioner's eligibility for EB-2 classification as an advanced degree professional, he did not establish 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. 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 a member of the professions holding an advanced degree 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 USCIS may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates that:

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 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 Director concluded that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree and the record supports this determination. The remaining issue is whether the Petitioner has established that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. In applying the *Dhanasar* framework, the Director determined that the Petitioner established that he is well-positioned to advance the proposed endeavor and therefore met the second prong but did not satisfy the requirements for the first and third prongs. For the reasons provided 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. While we may not discuss every document submitted, we have reviewed and considered each one.

A. The Proposed Endeavor

The Petitioner intends to own and operate a technology transfer consulting company called [REDACTED] [REDACTED]² He indicates that he will establish the company in [REDACTED] Florida once he has been granted permanent residence, and will serve as its executive project manager. A business plan for the proposed company summarizes its activities as follows:

- The company will collaborate with universities, educational institutions, and research centers, engaging in a variety of commercial activities that are meant to facilitate the process of bringing research and development to market, often acting as a channel between academia and industry.
- The U.S. company will receive ideas and instructions from companies and then look for ways to facilitate the implementation of those ideas through work in research and education centers.

B. Substantial Merit and National Importance

The first prong of the *Dhanasar* analytical framework, 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.

As evidence related to this prong, the Petitioner submitted (1) his business plan for [REDACTED], (2) an expert opinion letter from a professor at [REDACTED], and (3) government, media and

² "Technology transfer" is defined by various sources in the record as "the process by which technology is transferred from federal labs, universities or other research institutions to industry where it can be developed into a commercial product or service."

industry reports on technology transfer, the IT consulting industry, the digital economy, data modernization, the cloud computing market, the economic impacts of technology spending, and the STEM talent shortage. On appeal, the Petitioner asserts that the Director did not give due regard to this evidence in addressing the national importance of the proposed endeavor.

The Petitioner emphasizes the importance of technology investment and technology transfer as drivers of the U.S. economy and submitted several articles and reports in support of his claim. This evidence is relevant to the substantial merit of the proposed endeavor, and we agree with the Director's determination that the Petitioner meets this element of the first *Dhanasar* prong. We recognize the merit of the Petitioner's plan to assist both university research labs and businesses by providing services designed to facilitate the commercialization of research and development activities.

On appeal, the Petitioner asserts that the previously submitted industry reports and articles also demonstrate the national importance of his work, emphasizing that the petitioner in *Dhanasar* similarly relied on articles to establish the national importance of his proposed endeavor. But in *Dhanasar*, the media articles discussed the national importance of the petitioner's specific proposed endeavor—to continue research into the design and development of hypersonic propulsion systems. *Matter of Dhanasar*, 26 I&N Dec. at 892. The record also included “probative expert letters from individuals holding senior positions in academia, government, and industry” that described the national importance of this specific research endeavor. *Id.* While the articles and reports here help demonstrate the importance of technology transfer activities in general, they do not demonstrate that the Petitioner's proposed endeavor - to establish a small business and offer consultancy and advisory services related to technology transfer - has national importance. We agree with the Director that 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 “specific endeavor that the [noncitizen] proposes to undertake.” *See id.* at 889.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Id.* at 890.

In the business plan for his proposed endeavor, the Petitioner stated that his work has national importance “given the current demand for skilled labor in the technology transfer sector.” We have reviewed the staffing and revenue projections in the submitted business plan. The Petitioner projects that his proposed company, within five years, will employ seven employees (not including the Petitioner), cumulatively pay wages of over \$1.8 million, generate cumulative gross revenues of over \$3.2 million, and contribute over \$500,000 in tax revenue to the economy.

Even if these employment and revenue projections were adequately supported by details showing their basis or a specific explanation of how they will be realized, the business plan would not demonstrate the proposed endeavor's significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Specifically, the record does not support that the direct creation of seven jobs in this sector or the expected tax revenue generated by the company will have a substantial

economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework. The business plan does not indicate that the Petitioner will establish his company in an economically depressed area, that it would employ a significant population of workers in such an area, or that the endeavor would offer a region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue. The Petitioner further states that his endeavor has national importance due to the shortage of specialists in technology transfer, and STEM workers in general, in the United States. However, it is not apparent how his endeavor would resolve this shortage or impact it on a national level.

We acknowledge the Petitioner's arguments that advancements in science and technology are important for the nation's productivity, competitiveness and quality of life, and that his endeavor to commercialize research being carried out at universities would therefore indirectly impact the U.S. economy beyond directly employing workers and generating tax revenue. Specifically, he indicates that his company "will help to extend the boundaries of science, which would allow the creation of new technologies, which in turn facilitates the creation of new industries and job, generates wealth and maintains U.S. power." However, the Petitioner does not offer an evidentiary basis to conclude that his operation of a small consulting business with one location will have such far-reaching results in the research and development field, which is described in the record as a \$280 billion industry. The record does not support a determination that any indirect benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. See 26 I&N Dec at 890.

On appeal, the Petitioner contends that the Director placed undue focus on whether his proposed endeavor would have "substantial positive economic effects," noting that job creation and other direct economic impacts are not the only factors that should be considered in weighing the national importance of the proposed endeavor. We agree and have also considered whether the Petitioner's proposed endeavor will have broader implications in his field or industry.

We determined in *Dhanasar* 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. See *id.* at 893. Here, the Petitioner, through his company, intends to "encourage and support faculty and students through the technology transfer process" and to transfer his knowledge to the technology managers that he hires to work for his company. He indicates that, as a result, he will make "unique contributions to the U.S. IT sector" and "generate new knowledge in the field" which will lead to "the improvement of technology transfer technologies." However, like the petitioner in *Dhanasar*, the Petitioner has not established how his proposed training, support and other knowledge-sharing activities would reach beyond his clients and employees to impact his field more broadly. The record does not establish, for example, that the Petitioner plans to more widely disseminate his strategies or techniques, such that his specific endeavor would provide a platform for the introduction of novel technology transfer methods, or that he would otherwise be positioned to influence the broader field or industry in this regard.

On appeal, the Petitioner asserts that the services offered by his proposed business, will have an impact on matters that are the subject of national initiatives by the U.S. government. He submits information from the U.S. Patent and Trademark Office summarizing a series of laws enacted by Congress to promote and incentivize the commercialization of federally funded technology through various mechanisms. The Petitioner also submitted a copy of the U.S. Department of Commerce's "2020

Annual Report on Technology Transfer” published pursuant to the Technology Transfer Commercialization Act of 2000. The Petitioner maintains that this evidence demonstrates a U.S. government interest in “bolstering the technology transfer industry.”

USCIS will consider evidence demonstrating how a specific proposed endeavor impacts a matter that a government entity has described as having national importance or a matter that is the subject of national initiatives. Again, in determining national importance, the relevant question is not the importance of the industry 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. Therefore, pursuing employment or operating a business in an area that is adjacent to or aligned with the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. Here, the Petitioner has not sufficiently explained the potential prospective impact or broader potential implications of his specific endeavor on the referenced federal technology transfer initiatives.

The Petitioner has similarly claimed that his proposed endeavor would be of national importance in promoting U.S. competitiveness in STEM fields. USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies, or other STEM areas important to U.S. competitiveness or national security. We may find that a STEM area is important to competitiveness or security in a variety of circumstances, for example, when the evidence in the record demonstrates that an endeavor will help the United States remain ahead of strategic competitors or current and potential adversaries, or relates to a field, including those that are research and development-intensive industries, where appropriate activity and investment, both early and later in the development cycle, may contribute to the United States achieving or maintaining technology leadership or peer status among allies and partners. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policymanual>.

The Petitioner here only vaguely asserts that the proposed consulting business would have an impact on technology transfer in “engineering” fields, but as we have discussed, he does not sufficiently articulate how his work will specifically impact his field on a national level and does not sufficiently detail the technologies he would work with. Further, the Petitioner did not explain or document how his proposed endeavor would help the United States stay ahead of strategic competitors or adversaries or maintain technology leadership or peer status among allies and partners. For these reasons, the Petitioner did not demonstrate the national importance of his proposed endeavor based on its focus in STEM fields.

We acknowledge that the Petitioner, in his personal statement, business plan and appellate brief, has placed considerable emphasis on his academic training in engineering, acquisition management and capacity development planning, and his professional experience in the project management and technology transfer fields. The record also contains reference letters from persons who are familiar with the Beneficiary’s industry expertise, relevant work experience, and past achievements. While important, the Petitioner’s expertise acquired through his academic and professional career primarily relates to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar*’s first prong. A determination

regarding the claimed national importance of a specific proposed endeavor cannot be inferred based on the Petitioner's past accomplishments, just as it cannot be inferred based on general claims about the importance of a given field or industry.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from a professor at [REDACTED]. Much of the letter's discussion of *Dhanasar*'s first prong addresses the importance of research and development, the nature and growth of the research and development market in the United States, the benefits of technology transfer, and the impact of STEM fields, immigrants, and entrepreneurs on the U.S. economy. The author concludes that "the proposed endeavor will broadly enhance societal welfare" and "has significant potential to employ U.S. employees and other substantial positive economic effects." However, the author does not offer any meaningful analysis of the Petitioner's business plan, the specific proposed endeavor and its prospective substantial economic impact, or the broader implications of the proposed endeavor in the Petitioner's field or industry.

We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's specific proposed endeavor.

Overall, while the Petitioner's evidence establishes how his endeavor stands to positively impact his future clients, the evidence does not persuasively establish how his endeavor will have a broader impact consistent with national importance. Accordingly, the Petitioner has not established that his proposed endeavor meets the first prong of the *Dhanasar* framework. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning his eligibility under the third prong of the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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 reason.

ORDER: The appeal is dismissed.