



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 29200309

Date: DEC. 19, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a chef and entrepreneur in the culinary field, 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 Director of the Nebraska Service Center denied the petition, concluding the record did not establish the national importance of the proposed endeavor or that it would be in the United States' interest to waive the requirement 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

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.

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 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 determined the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the Dhanasar framework. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor 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.

On the Petitioner's Form I-140, Part 6, items 1 and 3, he wrote that he plans to work as a chef/entrepreneur in the culinary field. He described his duties as "direct and may participate in the preparation, seasoning, and cooking of salads, soups, fish, meats, vegetables, desserts, or other foods" (all capital letters removed). To support his petition, he provided a statement, explaining that he plans to manage and operate his own business consulting company in the field of gastronomy. His endeavor will involve:

[P]roviding consultancy for already established businesses and also in the opening of new ventures, from the preparation of the business plan, covering physical structure, machinery, menus, technical sheets, training for the work team and monitoring the beginning of the operations. . . [i]t is important to emphasize that the company will not be limited to a single sector, being able to perform consulting services for companies in different areas. The Company will help American companies to invest and open branches in Brazil, and international companies to invest or open branches to operate in the US, thereby increasing FDI – Foreign Direct Investment, within the United States. . .

He further stated that he will:

Coordinate and supervise business activities to ensure they produce the desired results and are consistent with the company's overall strategies. I am also responsible for ensuring organizational compliance with regulations, laws, procedures, and policies, and I monitor the company's revenue and profits, as well as its financial and non-financial reports, so as to devise solutions and improvements.

His business plan states that the Petitioner's company "will be inserted" into the "[m]anagement and [c]onsulting [i]ndustry." His company "will also carry out [s]ocial [p]rojects in underserved areas and underdeveloped communities, focusing on teaching gastronomy and business development, through

the educational and professional experience of [the Petitioner], for low-income families, with the objective of generating extra income, producing and selling what was taught with a market vision.”

Upon de novo review of the record, we conclude that the Petitioner has not identified a specific proposed endeavor. The Petitioner’s proposed work is very expansive and includes the ownership and operations of his own business, compliance, teaching, social projects, providing business development and management consulting for businesses in any sector, and FDI. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889. Any one of these activities could constitute a full-time job. The Petitioner offered little indication of whether he plans to perform these activities concurrently or consecutively, or how much time he will devote to each activity. This is material, as each of these activities would necessarily produce different impacts. For instance, the Petitioner’s activities as a chef in preparing a soup is quite different than his activities consulting for a U.S. business intending to open a healthcare chain in Brazil, yet each of these activities appear equally possible under the proposed endeavor, as described.

In response to the Director’s request for evidence (RFE), the Petitioner stated that his endeavor involves “working for any company in need of his superior culinary skills” (emphasis supplied). This statement appears to be inconsistent with the Petitioner’s plans to own and operate his own business and adds further confusion to what the proposed endeavor involves. The Petitioner has not offered a sufficient explanation for how these various diverse activities realistically fit together into one endeavor. Accordingly, we conclude that the Petitioner’s proposed endeavor is not sufficiently specific or consistent.

The second *Dhanasar* 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 evidence suggests that the Petitioner earned a two-to-three-year degree (Título de Tecnólogo) in gastronomy technology, a graduate course (Latu Sensu) certificate in teaching and learning evaluation, as well as the foreign equivalent of a U.S. master’s degree in environment and regional development. While the Petitioner’s academic career is commendable, we conclude that it does not reflect an education that would lend itself to business development and management consulting, entrepreneurship, or foreign direct investment. Likewise, the Petitioner’s experience as a culinary professor, chef, and event planner does not support a finding that the Petitioner has experience in business development and management consulting, entrepreneurship, or foreign direct investment. Accordingly, even if we could synthesize the Petitioner’s expansive proposed activities into a single proposed endeavor, the Petitioner’s education and experience would not necessarily support a conclusion that he is well positioned to advance the endeavor, at least insofar as his activities relate to business development and management consulting, entrepreneurship, or foreign direct investment. Therefore, we withdraw the Director’s finding that the Petitioner established eligibility under the second *Dhanasar* prong.

On appeal, the Petitioner argues the Director did not properly consider the evidence and applied a heightened standard of proof in the adjudication of the petition. Specifically, the Petitioner states the Director did not give due consideration to his experience and professional qualifications; business plan; letters of recommendation; and industry reports and articles. In support, the Petitioner relies upon the evidence and arguments he previously submitted. However, as explained above, the Petitioner's proposed endeavor is not sufficiently specific or consistent, nor has he established that he is well positioned to advance his endeavor.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the Dhanasar analysis. Because the Petitioner has not narrowed his activities into a specific and consistent proposed endeavor or shown how his education and experience position him well to carry out his endeavor, we cannot conclude that he meets either the first or second prong, or that he has established eligibility for a national interest waiver.

III. CONCLUSION

The documentation in the record does not establish a specific and consistent proposed endeavor. Furthermore, the record does not establish that the Petitioner is well positioned to advance his endeavor. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in Dhanasar would serve no meaningful purpose.

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 "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).

As the Petitioner has not met the requisite first and second prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.