



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

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

In Re: 29137195

Date: DEC. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and business manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability, 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 Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as an individual of exceptional ability, 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 discretion<sup>1</sup>, grant a national interest waiver if the petitioner demonstrates that:

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<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.

## II. ANALYSIS

The Director found that the Petitioner qualifies as an individual of exceptional ability. 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 indicated that he intends to establish a Florida-based limited liability company (LLC), [REDACTED]. He asserted that his company is “a startup organization that will provide energy assessments, solar panel installations, and general energy implementations for both residential and commercial customers.”

The Petitioner provided the business plan for [REDACTED], which stated that the company “will focus its services on clients that aim to increase their energy efficiency and consequently, diminishing their energy expenses while contributing to the environment. [REDACTED] will target both residential and commercial customers in Florida, focusing primarily on [REDACTED] and [REDACTED] counties.” The business plan includes industry and market analyses, information about the Petitioner’s company and its services, financial forecasts and projections, marketing strategies, a discussion of his work experience, and a description of company personnel. Regarding future staffing, the Petitioner’s business plan anticipates that his company will employ 9 personnel in year one, 13 in year two, 18 in year three, 23 in year four, and 26 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 \$2,068,000 in year one; \$2,688,400, in year two, \$3,669,666 in year three, \$4,623,779 in year four, and \$5,825,962 in year five, he did not adequately explain how these sales forecasts were calculated.

The record includes information about energy and its impact on the environment, energy audits, the cost of solar panels, the federal investment tax credit for commercial solar photovoltaics, electrical wiring installation, energy efficiency, the U.S. Environmental Protection Agency’s “National Action Plan for Energy Efficiency, the economic and fiscal consequences of immigration, the effects of immigrant workers on domestic wages, the U.S. Energy and utility consulting services market, benefits of residential solar, and clean energy loan guarantees. He also submitted information about White House initiatives to support clean energy, environmental justice, our nation’s immigration systems, inclusion efforts for foreign-born individuals, climate action and sustainability, solar power, affordable energy, and inflation reduction. Additionally, the Petitioner provided articles discussing the environmental impact of the U.S. manufacturing industry and its suppliers, the value of small businesses to the U.S. economy, comprehensive climate action, accelerating the resurgence in manufacturing, the business case for sustainable manufacturing, federal sustainability and small business initiatives, the benefits of a commercial solar system, the economic and environmental impact of solar energy, ways manufacturers can benefit from using solar power, and property assessed clean energy. Here, the Director concluded that the submitted documentation demonstrates the proposed

endeavor's substantial merit. In determining national importance, however, 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. The Petitioner must still establish the potential prospective impact of his specific proposed endeavor.

Furthermore, the Petitioner offered letters of support from A-S-, A-G-, F-S-, M-B-, P-F-, R-G-, J-S-, T-O-, T-P-, and S-S- discussing his business capabilities and experience in the Brazilian electric services sector. 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 "Expert Opinion Letter(s)" from Dr. V-L-, Associate Professor of Marketing at T-S-U-, and Dr. A-M-, Professor of Strategy and Technical Leadership at U-M-, in support of his national interest waiver. Dr. V-L- and Dr. A-M- contend that the Petitioner's proposed work is of national importance because the solar energy industry and U.S. small businesses in general 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. While the advisory opinions cite to publicly available information from the White House and federal agencies to establish the overall importance of the solar energy industry and clean energy, they have not demonstrated how performing day-to-day managerial oversight for energy assessments and solar panel installations as contemplated by the Petitioner's proposed endeavor rises to a level of national importance. The letters from Dr. V-L- and Dr. A-M- do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work 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 "organization, its clients and the individuals the Petitioner would serve to impact the industry or field more broadly." 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."

On appeal, the Petitioner points to his "15 years of experience" in the energy distribution industry, "managerial skills," and bachelor's degree. The first prong of the *Dhanasar* framework focuses on the proposed endeavor; not on the Petitioner's prior work in the field, business skills, or academic qualifications. The national importance of the Petitioner's proposed endeavor stands separate and apart from his education, skills, and job experience.<sup>2</sup>

The Petitioner contends that his proposed endeavor has national importance because it will "generate substantial ripple effects upon key commercial business activities" and serve "the business development,

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<sup>2</sup> *See Dhanasar* at 890.

sales, and business functions of U.S. companies.” He indicates that his undertaking promotes “a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy.” The Petitioner further asserts that “[redacted] will work with a variety of residential and commercial customers, first within the [redacted] counties and later within the entire state of Florida.” He also claims that his proposed work stands to generate “jobs for U.S. workers in these underutilized areas, improving the wages and the working conditions for the U.S. workers, and helping the local community bring investments to the region.”

In addition, the Petitioner argues his proposed endeavor stands to affect the national economy by “offering economic convenience and agility” to “small and medium sized U.S. companies,” “promoting growth and expansion and driv[ing] change with innovation,” “stimulating the domestic job market,” and generating “new jobs for American workers.” The Petitioner also cites to information from IBISWorld to show forecasted growth in the solar power industry, but he has not demonstrated how operating a company that offers energy assessments and solar panel installations as contemplated by his proposed endeavor rises to a level of national importance.

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 energy assessments and solar panel installations 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 solar 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 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 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.