



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 29049859

Date: DEC. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a facilities manager, 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). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition. The Director concluded that the record did not demonstrate his eligibility for the requested national interest waiver. 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 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.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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:

- 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 Petitioner proposes to establish a facilities management services business in the United States having previously worked as a facilities coordinator, administrative manager, and property security guard in Brazil.

A. Member of Professions Holding an Advanced Degree

The Director determined the Petitioner is eligible for the EB-2 classification as an advanced degree professional. Upon de novo review, we find the record does not establish the Petitioner's eligibility for the underlying EB-2 classification.

The Petitioner submitted evidence to qualify as a member of the professions holding an advanced degree. To qualify as a member of the professions, an individual must meet "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2).² The record does not establish that the Petitioner's occupation as a facilities manager is a statutory listed occupation or requires the minimum of a U.S. bachelor's degree or its foreign equivalent for entry into the occupation.

The Petitioner maintains that his position as the owner and manager of his facilities management services business comports with the duties and responsibilities of those employed in the "Facilities Managers" SOC Code 11-3013 occupation. The U.S. Department of Labor states that the education requirements for this occupation are "training in vocational schools, related on-the-job experience, or an associate's degree." See U.S. Department of Labor, O*NET Summary Report for "Facilities Managers," <https://www.onetonline.org/link/summary/11-3013.00>. Since a U.S. bachelor's degree or its foreign equivalent is not the minimum requirement for entry into the Petitioner's intended occupation of facilities manager, he has not established that he qualifies as a member of the professions. 8 C.F.R. § 204.5(k)(2).

Since the record does not show that the Petitioner qualifies as a member of the professions, he has not established that he is eligible for the EB-2 classification as a member of the professions possessing an advanced degree. We therefore withdraw the Director's findings for the Petitioner's eligibility for the underlying EB-2 classification.

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).

² Section 101 (a)(32) of the Act states "[t]he term 'profession' shall include but not limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

B. National Interest Waiver

The Director determined that the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further found that the Petitioner did not establish that he is well positioned to advance the proposed endeavor under the second Dhanasar prong, and 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 under the third Dhanasar prong. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.³

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 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." *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner's business plan states that his business would provide facilities management services to real estate owners and to small and medium-sized businesses in the property management, hotel, and walk-in clinic sectors of the [redacted] area of Florida. The business' services would include management of third-party providers, help-desk management, contract monitoring, computer aided facilities management systems, asset management, and interface with public utility providers, regulators, and public authorities. The business would also provide housekeeping and other soft services, such as landscaping, pool maintenance, waste management, pest control, and vending services; as well as, technical operations and maintenance, such as mechanical and electrical services, plumbing and drainage, fire control and fighting, critical engineering access control, and backup power generation.

The business plan further describes the Petitioner's intent to expand the business through the development of a software application platform. The software application would support the business' "operation and facilitate contact between customers and professionals registered on the platform, in addition to managing schedules and monitoring all stages of the service." The business intends to contract a software developer to create the software application with initial features for payment management and customer reviews. The business would later expand the software application to allow customers to monitor schedules and to obtain educational information on property maintenance, safety, and environmental and sustainability issues. We agree with the Director that the Petitioner's endeavor has substantial merit.

With respect to the national importance of the proposed endeavor, the Director found that the Petitioner did not submit "sufficient evidence to demonstrate that the prospective impact of his proposed

³ While we may not discuss every document submitted, we have reviewed and considered each one.

endeavor rises to the level of national importance. . . . USCIS finds that the [Petitioner] has not shown that his proposed endeavor . . . stands to sufficiently extend beyond his company and his clients to impact the industry or field more broadly.” The Director further stated, “[The Petitioner] has not demonstrated that the specific endeavor he proposed to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation.” Therefore, the Director found that the Petitioner did not meet his burden in establishing the national importance element of the first prong of the Dhanasar framework.

The Petitioner contends on appeal that his proposed endeavor “has implications beyond [his] potential employers/clients and reaches the level of national importance.” He argues that his proposed endeavor “is not just based on a vague record, but on a solid structure, with well-established technical and strategic foundations.” (emphasis omitted). The Petitioner points to his professional experience and expertise to show he “will be ready to meet the needs of consumers, offering high-quality services and innovative solutions.” He further argues his proposed endeavor has economic benefits to the local underutilized business communities of Florida and to the United States since the business would strengthen the finances of businesses, create jobs, and pay taxes. The Petitioner further argues the national importance of his proposed endeavor based on his business contributing to U.S. government initiatives supporting immigrant workers and entrepreneurs, and his business filling a need in the facilities management field due to the expected growth in the industry. Upon de novo review, we find the record does not demonstrate that the Petitioner’s proposed endeavor satisfies the national importance element of *Dhanasar*’s first prong.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is “more likely than not” or “probably” true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989). Here, the Director properly analyzed the Petitioner’s documentation and weighed the evidence to evaluate the Petitioner’s eligibility by a preponderance of the evidence.

The Petitioner argues on appeal that recommendation letters from professionals in the industry demonstrate his “impact and relevance in the field of facilities services” and that the professionals “attest to [his] expertise, leadership, and significant contributions to the industry.” (emphasis omitted). The recommendation letters are from his current and former employers and colleagues, mainly discussing the Petitioner’s work experiences as a facilities coordinator, an administrative manager, a property security guard, and a professional training course instructor. The letters explain the Petitioner’s knowledge and professionalism in those positions conveying his organizational, communication, and management skills and the importance of his work to his employers and their customers.

While we acknowledge that the Petitioner has experience providing facilities management and business administration services, the Petitioner’s reliance on his professional experience and knowledge to establish the national importance of his proposed endeavor is misplaced. His professional experience and knowledge relate to the second prong of the Dhanasar framework, 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 specific endeavor that the Petitioner proposes to undertake

has national importance under Dhanasar's first prong. 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. See *id.* at 889. The Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of his proposed endeavor will rise to the level of national importance, rather than only impacting his clients. The letters do not demonstrate that the Petitioner's work will have national or global implications in the field of facilities management.

The Petitioner argues on appeal that his proposed endeavor will have economic benefits to the local and national economies. He claims that the business' software application "will be an innovative platform facilitating interaction between service providers and consumers" which "will significantly benefit the economy as a whole, not limited to a specific region but the entire national territory." The Petitioner also claims the software application will stimulate entrepreneurship and job creation for the self-employed and small and medium-sized businesses promoting their services. He further argues that his business could "positively impact the entire regional production chain" by improving the productivity and efficiency of local businesses and organization thereby creating demand for other related sectors, such as equipment, logistics, and technology suppliers, boosting regional economic development." The business would have "a direct impact on job creation and on moving the regional economy" resulting "in a virtuous cycle of regional economic growth."

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. *Matter of Dhanasar*, 26 I&N Dec. at 893. Here, the record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of facilities management, as contemplated by *Dhanasar*: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* The evidence does not suggest that the Petitioner's facilities management services business would impact the facilities management field more broadly or provide the claimed economic benefits to the United States. The record does not indicate that the software application has been created, but instead indicates the Petitioner will be seeking advice from professionals in the future for the development of the proposed software application. Besides general assertions, the record does not show that the business' proposed software application or its facilities management services would provide innovations in the field or economic benefits beyond the business and its clients.

With the petition, the Petitioner submitted a business plan describing the business and its potential economic, social, and environmental contributions to the United States and local communities. The business plan explains that the business would be established in an underutilized business community of [REDACTED], Florida and would serve small and medium-sized businesses in that community. The business plan contends the business would create direct and indirect jobs for U.S. workers in underutilized business communities; increase income to those communities; enhance production chains for the business' corporate clients; generate taxes for local and national social services; provide sustainable projects and services; and transfer the Petitioner's professional knowledge to its clients, partners, and suppliers.

However, the record does not demonstrate that the proposed endeavor would provide economic, societal, or environmental benefits that rise to the level of national importance. The business plan projects that in five years the business will create 14 direct jobs and approximately 172 indirect jobs; pay over two million dollars in wages and commissions; and generate almost seven hundred thousand in taxes. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized.

The Petitioner has not provided corroborating evidence to support his claims that his business' future staffing levels and business activities stand to provide substantial economic, societal, and environmental benefits to an underutilized area of [redacted] Florida and the United States. The Petitioner's claims that his facilities management services business will benefit the U.S. economy and enhance societal welfare has not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide economic, societal, and environmental benefits. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376.

The Petitioner expresses his desire to work with sustainable products in order to be environmentally responsible, and to contribute economically to the United States and underutilized business areas of [redacted], Florida. However, he has not established with specific, probative evidence that his endeavor will have broader implications in his field, will have significant potential to employ U.S. workers, or will have other substantial positive economic, societal, and environmental effects to Florida or the United States. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 14 direct jobs and 172 indirect jobs; paying over two million dollars in wages and commissions; and generating over four hundred thousand dollars in almost seven hundred thousand in taxes over a five-year period rises to the level of national importance. Also, without sufficient documentary evidence that his proposed job duties as the owner and company manager for his business would impact the facilities management industry more broadly, rather than benefiting his business and his proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The Petitioner also stresses the national importance of his proposed endeavor is evidenced through its advancement of U.S. government initiatives supporting immigrants in the U.S. workforce and immigrant entrepreneurs. The business plan provides an analysis of the economic benefits of U.S. immigration reform, an immigrant workforce, and immigrant entrepreneurs. The business plan also provides an analysis of the facilities management industry and the expected growth of the industry. Although the business plan includes citations for the Petitioner's assertions, he did not provide independent, objective evidence supporting his assertions. See *id.* Further, although we recognize the importance of the facilities management industry, related careers, and the significant contributions from immigrants who have become successful entrepreneurs, working as a facilities manager and starting a facilities management services business are insufficient to establish the national importance of the proposed endeavor. Instead of focusing on an industry or occupation, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889.

We note that the record includes an opinion from [redacted] Ph.D., associate professor of marketing at [redacted]. The opinion includes an analysis of the national importance

of the Petitioner's proposed endeavor stating, "[The Petitioner] will work in an area of substantial merit and national importance." (emphasis omitted). The opinion contends the Petitioner's proposed endeavor has national importance based on the expected job growth opportunities in the facilities management field and the importance of immigrant entrepreneurs to U.S. economic growth. However, stating that the Petitioner's work as an immigrant entrepreneur would support an important industry which is expected to have job growth is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The opinion also stresses the importance of small and medium-sized businesses and the Petitioner's facilities management experience making him capable to "improve operations and achieve better productivity and profitability levels, therefore generating revenues within the country and creating employment opportunities." The opinion explains some of the services to be offered by the Petitioner's facilities management services business and the potential growth of the business through its intended software application. The opinion reiterates the business plan's projected jobs and finances, and based on these projections, the opinion states, "Therefore, the proposed endeavor has significant potential to employ U.S. workers and has other substantial positive economic effects." However, the opinion generally restates information provided in the business plan and does not explain the basis for these employment and financial projections. Also, the opinion's focus on the Petitioner's facilities management knowledge and experience does not show the national importance of his proposed endeavor, but instead relates to the second Dhanasar prong.

The Petitioner does not demonstrate that his proposed endeavor extends beyond his business and his future clients to impact the field of facilities management or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as the owner and company manager of his proposed facilities management services business offers original innovations that contribute to advancements in his industry or otherwise has broader implications for his field. The economic and societal benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed business' facilities management work and the claimed economic and societal results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility under the second and third prongs. 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

We withdraw the Director's finding that the Petitioner has established that he qualifies for the second-preference employment visa as a member of the professions holding an advanced degree. In addition,

since he has not met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner is not eligible for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.