



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

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

In Re: 27416742

Date: JUL. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur who imports and distributes textile products, 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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, concluding that the record did not establish that the Petitioner qualifies for a 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.

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.” *Id.* 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 discretion,¹ 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.²

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined on appeal 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.

The record includes a business plan explaining that the Petitioner currently operates a U.S. branch of a textile manufacturing company in Brazil, and that the branch currently imports and sells its products wholesale. The business plan states that the Petitioner intends to open a warehouse in Florida, to import and process textiles to be sold as final products, creating twenty-seven jobs. In a personal statement, the Petitioner provided the following:

My specific endeavor will potentially impact the U.S. in the following ways:

- Overall U.S. job creation and tax revenue;
- Designing, implementing, and managing all activities in the business development and management foreign trade, strategic planning, and leadership areas of business;
- Serving economically underserved and rural communities, with my expertise in the textile, international organizations management, air cargo, and craft/floral industries to streamline their business area, as well as promote the creation of jobs;
- Aiding and providing communities with consultancy services in business areas, specializing in business development and management, foreign trade, strategic planning, and leadership;
- Providing integral guidance and advisement to U.S. companies doing or planning to do business in Brazil seize new business and investment opportunities; and,
- Network with industry peers, competitors, and prospective clients to continuously develop new business opportunities.

Although the Director determined that the Petitioner's proposed endeavor has substantial merit, the Director concluded that the record did not establish that the endeavor is of national importance. On appeal, the Petitioner asserts that USCIS "erroneously denied" the petitioner and "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." The Petitioner, however, does not specify how the Director erred or what factors in the decision were erroneous.³ The

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 See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. See 8 C.F.R. § 103.3(a)(1)(v).

Petitioner also contends, without further explanation, that the Director applied a stricter standard of proof than that of preponderance of the evidence⁴ and disregarded the evidence submitted. The Petitioner provides a brief that emphasizes the Petitioner's qualifications as an entrepreneur and asserts that the evidence of record establishes the national importance of the proposed endeavor. On appeal, the Petitioner states the following:

Appellant's proposed endeavor [will] promote business activities by enhancing the sales and revenue capabilities of U.S. companies, prompting growth within small and medium sized businesses, streamlining the U.S. business ecosystem, generating jobs, and improving other economic initiatives....

For the reasons provided below, we agree that the Petitioner has not demonstrated the national importance of the proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The first prong, 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.

The business plan and personal statement in the record indicate that the Petitioner wishes to expand his business in the United States. Although the business plan specifies that the Petitioner's "main plan is to have a warehouse in [redacted]...to import the gross product to create new shapes, designs in warehouse, pack kits and provide different final products ready to use," his personal statement provides a more general description of his endeavor:

My career plan in the United States is to continue working as an Entrepreneur, developing new enterprises for the North American market and generating more direct and indirect jobs through my endeavors. I intend to continue expanding, maintaining good working relationships with investors, and identifying any opportunities for growth. I have plans for future business expansion and I will continue to facilitate the creation of jobs within the U.S. I have the experience and skills to navigate lucrative business projects and my unique expertise will surely provide guidance and success in the textile, international organizations management, air cargo, and craft/floral industries.

The business plan also speaks generally about the role of technology in business, business management systems, how businesses provide value to economies, and the textile industry. The record includes several articles discussing immigrant entrepreneurship, as well as a report on the airline industry.

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 "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

⁴ *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

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. Further, 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. 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.

Much of the evidence of record related to the Petitioner’s endeavor does not discuss the Petitioner’s specific intentions, but is general in nature, covering issues in the business of importing and exporting. The portion of the business plan that provides details concerning the Petitioner’s anticipated business growth discusses traditional marketing strategies and “an estimate of [the company’s] financial behavior in the next 5 years of operation,” anticipating a total of \$353,871.84 in taxes paid by the fifth year of the company’s operation, as well as the creation of twenty-seven direct jobs and 135 indirect jobs. However, the origins of the figures presented are not clear, and the record does not contain other objective evidence to support the estimates forecasted; the business plan is not supported by evidence showing how the business’s growth projections will be realized. Further, while the Petitioner states in his brief that he expects a “total investment of \$787,231.50” during the first five years of the operation of his business, he does not identify the source of this investment beyond speculation that profits from the company will be invested into the company. The Petitioner’s unsupported statements are insufficient to meet his burden of proof. A petitioner must support assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. The evidence of record does not demonstrate that the endeavor realistically has significant potential to employ U.S. workers or otherwise offer substantial positive economic benefits for the United States. The Petitioner has not demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. 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 agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); 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

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.