



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

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

In Re: 27416951

Date: JULY 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a civil construction specialist, 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 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 a member of the professions holding an advanced degree, 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. 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:

- The proposed endeavor has both substantial merit and national importance;

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 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 a member of the professions holding an advanced degree. 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 initially indicated that he intends to continue to work “as a Civil Construction Specialist with [REDACTED]”² He provided an employment agreement stating that his “scope of work” will entail the following:

- Prepare daily reports
- Set up of concrete pours and coordination meetings
- Coordinate with our third-party PE the shoring inspections one time
- Attend with the Principal PM the weekly sub-meetings or any coordination meeting requested by GC and Owner
- Assist to the Principal PM in any communication with the GC and vendors
- Assist to the Principal PM in any kind of report using our standard templates
- Follow up to some specific vendor in order to guarantee the material delivery on time, or any letter - report signed by PE
- Assist to the Principal PM in the eight weeks look ahead schedule preparation (if required)
- Assist to the Principal PM in the data preparation (if required) for future as-builts, RFIs, and change orders
- Follow up to RFI and submittals
- In PT slabs follow up from the stressing log until the approval letter of cutting cables
- Take photos and records of any concrete pour and/or job site issues
- Make copies of the inspection reports in each concrete pour for [REDACTED] records
- Take photos and records of the forming equipment devolution
- Keep in touch with our pre-construction team in order to have updated the project documentation at job site
- Require to the engineering and pre-construction team copy of shop drawings or any submittal needed to run the project properly
- Prepare and follow up of work orders (if required) in order to get signed by GC, and submit them to our pre-construction team
- Required software to be used in this position: Microsoft Word and Excel, Revu Bluebeam Xtreme, Sketch-up, [and] AutoCAD

In response to the Director’s request for evidence (RFE), the Petitioner asserted that he plans “to work in the United States as President and Civil Construction Specialist, at my own company [REDACTED]

² The record includes a letter from [REDACTED] stating that the Petitioner has served in the position of project engineer since April 2019.

founded in 2018, a company dedicated to the design, construction, and maintenance of buildings.”³ He indicated that his “proposed endeavor includes developing solutions for companies operating in the construction sector - overseeing their organization, planning, budgeting, and implementing quality and safety parameters.” The Petitioner further stated:

With the goal of creating and strengthening our services, [] created its first strategic alliance with [] a company that offers high-quality solutions to government agencies, public institutions, and private companies in the areas of industrial safety, emergency, and fire suppression. This alliance is designed to meet the enormous number of needs in the maintenance and execution of construction projects....

In addition, [] is committed to providing services related to conservation, maintenance, and construction in research centers, national security centers, tourist centers, and other institutions that require our services.

Furthermore, [] has also been involved in repairing houses damaged by natural disasters, installation of recreational equipment in houses, such as gyms, spas, and lighting, identification and causes of problems in houses, remodeling, repairs, and restoration of poorly executed works by other companies.

The record includes information about the economic effects of construction in the United States and Florida, the high demand for civil engineers, construction industry trends in Florida, the job outlook for architectural and engineering managers, and economic benefits attributable to the construction industry. In addition, the Petitioner provided articles discussing infrastructure challenges facing the United States, the Trump Administration’s initiatives to promote high-quality STEM and computer science education, the construction industry’s contribution to the U.S. economy, and the economic contributions of immigrant scientists and engineers. He also submitted information about the job market for civil engineers in the United States, ensuring the safety of essential critical infrastructure workers during the COVID-19 pandemic, the relationship of the construction sector to economic growth, and robotics in the construction industry as a solution for labor shortages. The record therefore adequately demonstrates that the Petitioner’s proposed endeavor has substantial merit.

Furthermore, the Petitioner provided letters of support from [] discussing his civil engineering skills, managerial knowledge, and construction projects. 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 an “Expert Opinion Letter” from both Dr. D-P-, an associate professor at [] University, and Dr. A-A-, an adjunct professor at [] College [] in support of his national interest waiver. Both Dr. D-P- and Dr. A-A- contend that the Petitioner’s proposed work is of national importance because his generic occupation of civil engineer and the

³ The record includes the State of Florida business registration for []

construction industry in which he works stand to offer significant potential to employ U.S. workers, provide substantial positive economic effects, impact national government initiatives, or broadly enhance society welfare. 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. The letters from Dr. D-P- and Dr. A-A- do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner’s specific proposed work in civil construction 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 “has implications beyond his employer or prospective employer, their business partners, alliances, and/or clients/customers and his prospective colleagues or workplace at a level sufficient to demonstrate the national importance of his endeavor.” The Director also indicated that the Petitioner had not shown his proposed work has broader implications in the field, significant potential to employ U.S. workers, or other substantial positive economic effects.

On appeal, petitioner contends that his proposed endeavor stands to have “a significant positive impact on the U.S. economy by creating new jobs, improving infrastructure, supporting economic growth, and generating additional tax revenue.” He asserts that his undertaking offers “innovative solutions and constructions that prioritize quality, comfort, and economy, promoting the health and safety of its users.” Additionally, the Petitioner indicates that his endeavor provides “substantial socio-economic benefits to U.S. businesses and citizens” and “supports a range of workers and industries critical to the functioning of the country.” He also claims that his proposed work “will create many new jobs, from construction workers to engineers and project managers.” The Petitioner further states that his undertaking is aimed at providing “reliable and efficient infrastructure to communities that lack access to them” and therefore impacts “the local or regional economy more broadly.”

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 valuable civil engineering and construction management services for his employer or his company’s clients, 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 or its clientele to impact the civil engineering field, the construction industry, societal welfare, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated 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. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's construction projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, 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 third prong 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.