



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

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

In Re: 27440128

Date: JUL. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a graphic designer, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established eligibility for 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. 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.¹

I. LAW

To establish eligibility for a national interest waiver, petitioners must 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if:

¹ The Director’s decision only addressed the Petitioner’s eligibility for a national interest waiver, which is the sole issue on appeal. Because the Petitioner did not establish eligibility for a national interest waiver on appeal, we need not remand the matter to the Director in order to make a determination on the underlying immigration classification.

² 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

As it relates to the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. At initial filing, the Petitioner's cover letter stated that he "seeks to continue his endeavor as a Graphic Designer by opening up his own U.S. graphic design company, through which he will be applying his skills in furtherance of U.S. companies needing superior designs to market their services and products."

In response to the Director's request for evidence, the Petitioner submitted a business plan for [REDACTED] and a personal statement indicating:

Through my work with [REDACTED] I aspire to alleviate the negative impact of the pandemic crisis on the U.S. through creation and innovation, helping companies and entrepreneurs to reposition their brands and products in the market by remodeling and renovating safe and aesthetically appealing residential and commercial spaces.

My short-term goal is to open an integral design studio to welcome our clients in a way that they are comfortable brainstorming their ideas that will give start to the design products.

....

I am also dedicated to offering great employment opportunities to countless American residents and citizens with excellent benefits, ensuring well-paid positions, affordable health insurance, retirement plan, and paid time off. We are currently in a steep ramp-up and hiring plan to reach over 5 employees in the following year to accommodate our clients growing demand, as well as our expansion throughout Florida and the rest of the country.

....

I intend to establish a pioneer venture that adds graphic design to interior spaces, giving more meaning and definition to the brand and enhancing businesses. [REDACTED] will enable me to guide and lead interior graphic design projects to increase the visual comfort of commercial offices, franchises, and offices, confer identity, and eliminate the ordinary style of the space for its users.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner maintains the national importance of his proposed endeavor of providing graphic design services through the operation of his business.

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 specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner references his submission of “Probative Research,” including a wide of topics covering graphic designer occupations, industry needs, visual learners, economic benefits, and design markets, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing his particular graphic design services through [REDACTED] rather than the importance of graphic designers and related fields and industries.³ In *Dhanasar*, we 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.

Moreover, the Petitioner contends that he presented an expert opinion letter from [REDACTED] who found his proposed endeavor has national importance. The letter, however, makes the same arguments, discussed above, relating to the importance of graphic designers, the graphic design industry, small businesses, and immigration rather than the national importance of the Petitioner’s specific, proposed endeavor of operating [REDACTED]. Furthermore, the letter does not explain how the Petitioner’s graphic design services, through his business located in an undisclosed area in Florida, have broader implications for our country. 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. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how his proposed endeavor largely influences the field and rises to the level of national importance. In *Dhanasar*, we determined 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. Likewise, the record does not show through supporting documentation how his graphic design services stand to sufficiently extend beyond his prospective clients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner also claims he provided recommendation letters “from clients, colleagues, and industry experts who attested to the quality of [the Petitioner’s] work and the potential impact of his proposed endeavor.” Although the letters praise him for his work, the Petitioner’s skills, expertise, and abilities 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 he proposes to undertake has national importance under *Dhanasar*’s first prong. In addition, the letters discuss the impact of the Petitioner’s work to their own experiences rather than the required broad impact to the graphic design industry. *Id.* at 889.

Further, the Petitioner did not demonstrate how his business plan’s claimed revenue and employment projections, even if credible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the sales forecast \$388K in year 1 to \$1,698M in year 5, the business plan does not establish the benefits to the regional or national economy

³ The Petitioner’s arguments and evidence relate more to the substantial merit aspect of the proposed endeavor rather than the national importance part.

would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Similarly, although the plan claims the business would create 3 jobs in year 1 to 12 jobs in year 5, the Petitioner did not demonstrate that such future staffing levels would provide substantial economic benefits to Florida or the region or U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not show that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not establish that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner’s proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

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. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.⁴

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility 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.

⁴ 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 alternate issues on appeal where an applicant is otherwise ineligible).