



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

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

In Re: 27363804

Date: JUL. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a computer and information systems 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).

The Director of the Texas Service Center denied the petition, concluding that, although the record demonstrates the Petitioner's eligibility for EB-2 classification as an advanced degree professional, he did not establish 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. 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." 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:

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 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 concluded that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree² and that his proposed endeavor has substantial merit. The Director also determined that the record did not establish that the Petitioner's endeavor has national importance or satisfy the second and third *Dhanasar* prongs. For the reasons provided below, we agree that the Petitioner has not demonstrated the national importance of his proposed endeavor.

A. The Proposed Endeavor

At the time of filing, the Petitioner submitted a professional plan in which he proposed to work as a computer and information systems manager in the United States. Specifically, he stated: "I want to work with a company that provides products or services that is enabled by cutting-edge technology systems to improve people's lives" and "work on large scale projects . . . that involve complex information technology systems."

In response to a request for evidence (RFE), the Petitioner provided evidence that he had accepted an IT specialist position with a U.S. employer. He also indicated that he intends to establish his own IT consulting company after securing lawful permanent resident status and submitted a business plan which states that it will offer an insurance management software package, software licensing, software training and support services, and IT consulting services. The Petitioner will be in charge of administrative and technical management functions.

B. Substantial Merit and National Importance

The first prong of the *Dhanasar* framework, 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.

As evidence, the Petitioner submitted (1) his professional plan and updated "definitive statement" describing his intended endeavor, (2) a business plan, (3) letters of support from current and former colleagues, (4) an expert opinion letter from a professor at [REDACTED] University, (5) a summary report for computer and information systems managers, and (6) media articles and industry reports on the IT industry, the labor and talent shortage in the industry, the intersection between technology and business, and the contributions of immigrant entrepreneurs to the U.S. economy. On appeal, the Petitioner asserts that the Director did not give due regard to this evidence in addressing the national

² The Petitioner provided evidence that he has the foreign equivalent of a bachelor's degree in information systems followed by more than five years of progressive work experience in this specialty and therefore established that he has the equivalent of a master's degree based on the applicable definition of "advanced degree" at 8 C.F.R. § 204.5(j)(2).

importance of the proposed endeavor. While we may not discuss every document submitted, we have reviewed and considered each one.

The Petitioner emphasizes the importance of both the IT industry and entrepreneurship as drivers of the U.S. economy and submits several articles and reports in support of his claim. This evidence is relevant to the substantial merit of the proposed endeavor and we agree with the Director's determination that the Petitioner meets this element of the first *Dhanasar* prong. However, 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 addition, we indicated 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.*

The Petitioner suggests that his proposed endeavor will have broader implications by "strengthening the IT industry," noting that this industry is important to the American economy, impacts other industries and markets, improves the population's quality of life, improves the financial results of U.S. companies, and will contribute to "the recovery of the American industry and economy impacted by the COVID-19 pandemic." We recognize the value of the IT industry and entrepreneurs and their respective direct and indirect impacts on the U.S. economy and other aspects of life in the United States. However, as the Director noted, the evidence does not demonstrate that the Petitioner's company and its activities would have economic impacts beyond the clients it would serve, or that it would otherwise have broader implications for the IT industry or other businesses in the United States. For example, he does not claim, and the record does not establish, that his company will introduce technologies or IT services that may be disseminated to or adopted by others operating in the field or industry, or otherwise articulate how his company will make a significant contribution to "strengthening the IT industry."

Further, while the Petitioner generally declares that technology can improve the quality of life for individuals, he does not elaborate on how his business would do so and the record does not provide adequate support for a determination that his specific proposed endeavor will have the scope or influence to make a wide-reaching impact. 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 agree with the Director that the Petitioner has not submitted sufficient evidence to establish what the broader implications of his work would be, that his work would extend beyond his company and its clients to impact the IT consulting field in which he intends to operate, or that it would broadly enhance societal welfare at a level commensurate with national importance.

In *Dhanasar*, 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. The submitted business plan includes projections that the company would employ 25 workers and achieve annual revenue of approximately \$2 million within five years. The Petitioner also indicates that his company will generate the creation of 125 indirect jobs and make tax contributions that will further add value to the U.S. economy.

We have reviewed the business plan and observe that the job creation and revenue projections included therein are not supported by details showing their basis or an explanation of how those projections will be realized. Even if the Petitioner had established a sufficient basis for these projections, they would not establish the national importance of the proposed endeavor. While the sales forecast and projected income statement indicate that the Petitioner's prospective business has growth potential, it does not demonstrate that it has significant potential to employ U.S. workers or would result in substantial positive economic benefits to the regional or national economy. We have also considered claims that there are labor shortages in the Petitioner's industry, but he has not suggested that his proposed endeavor would lessen the shortage of trained IT professionals on a scale rising to the level of national importance.³

The Petitioner also states that his business location will be in [redacted] Massachusetts, in a designated HUBZone area.⁴ As the company is not yet formed and does not have a physical location, the Petitioner has not offered sufficient evidence that his business will be located in a HUBZone. Further, he did not indicate that his endeavor would participate in the HUBZone program or that it would be eligible to do so. While it appears that the Petitioner may have intended to equate a designated HUBZone with an "economically depressed area," the record does not support a conclusion that this is an equitable comparison. The Petitioner has not otherwise claimed or provided evidence that the area where his company will operate is economically depressed, that it would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue.

Through his personal statements, appellate brief, and recommendation letters from current and former colleagues, the Petitioner has placed considerable emphasis on his academic training and professional experience in the information technology field. While important, they are considerations under the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong. While the Petitioner maintains that he has already "contributed to greatly improve the industry" and worked to improve "the quality of life of the nation's population," the submitted recommendation letters and other evidence do not contain sufficient detail to corroborate this claimed impact.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from a professor at [redacted] University. In addressing the first prong of the *Dhanasar* framework, the author emphasizes the economic importance of the U.S. and global information technology industry, the industry's demand for experienced professionals, the significant size of the Brazilian IT market, and market opportunities and challenges facing foreign companies seeking to do business in Brazil. He states that U.S. companies "doing business or planning to do business in Brazil would benefit from the expertise and skills of a seasoned Computer and Information Systems Manager and

³ We also note that such a shortage of qualified workers is directly addressed by the U.S. Department of Labor through the labor certification process.

⁴ Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized business zones, with a goal of annually awarding at least 3% of federal contract dollars to HUBZone-certified companies annually. See "HUBZone Program," <https://www.sba.gov/federal-contracting/contracting-assistanceprograms/hubzone-program>.

Telecommunications specialist” and indicates that the Petitioner has the ability “to bridge the gap between U.S. domestic business methods and Brazilian methodologies, within his field.” The professor also notes the Petitioner’s ability to make “major contributions to improve and facilitate cross-border transactions between the United States and Latin America” and concludes that his work would be “in an area of substantial merit and national importance.”

However, the expert opinion letter does not address the Petitioner’s business plan, the specific proposed endeavor, its prospective substantial economic impact, or any broader implications of the proposed endeavor in the field. In fact, the author appears to be under the impression that he will be focused on consulting with U.S. and Latin American interested in cross-border transactions and investments in IT and other projects, which is not the business model described by the Petitioner.

We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int’l*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national’s eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner’s proposed endeavor.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

Because the Petitioner has not established his proposed endeavor has national importance, he is not eligible for a national interest waiver under the *Dhanasar* analytical framework. We reserve our opinion regarding whether the evidence of record satisfies the second and third *Dhanasar* 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

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 reasons state above.

ORDER: The appeal is dismissed.