



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

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

In Re: 26929447

Date: JULY 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of sales and marketing, 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 Petitioner qualifies for classification as a member of the professions holding an advanced degree, 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.

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 discretion<sup>1</sup>, grant a national interest waiver if the petitioner demonstrates that:

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<sup>1</sup> *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

In the discussion below we will first address the Petitioner's eligibility for the EB-2 visa classification and then determine whether he merits a national interest waiver of the job offer requirement.

### A. EB-2 Visa Classification

The Director determined that the Petitioner qualifies for the EB-2 visa classification as an advanced degree professional. However, for the reasons discussed below, the record as currently constituted does not support that finding.

The record includes copies of the Petitioner's diploma certificate showing that he earned a "Título de Bacharel (A) EM Comunicação Social" from Universidade [REDACTED] in Brazil. According to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE):<sup>2</sup>

The 3-year *Título de Bacharel/Grau de Bacharel* represents attainment of a level of education comparable to 3 years of university study in the United States. Credit may be awarded on a course-by-course basis. The 4- or 5-year *Título de Bacharel/Grau de Bacharel* represents attainment of a level of education comparable to a bachelor's degree in the United States.

In the present matter, although the Petitioner provided transcripts and an "Evaluation of Education and Career Experience" (evaluation) indicating that he was awarded his degree in 1998, these documents do not establish that he graduated from a four-year program. Further, the record includes inconsistent transcripts reflecting the Petitioner's attendance at the above-named university. Namely, in connection to a previously filed petition, which was also filed for the purpose of qualifying for EB-2 immigrant classification and a national interest waiver, the Petitioner provided a transcript showing that he earned 177 credits at the Universidade [REDACTED] in Brazil.<sup>3</sup> However, another transcript submitted with the current filing reflects the Petitioner's attendance at that institution, but shows that the Petitioner earned 190 credits. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Without resolution of this issue, we cannot determine the accuracy of the transcripts submitted and whether the Petitioner has completed a four-year degree program equivalent to a U.S. bachelors, which if combined with five years of progressive experience in the specialty might equate to an advanced degree.

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<sup>2</sup> We consider EDGE to be a reliable source of information about foreign credential equivalencies. See *Confluence Intern., Inc. v. Holder*, Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). See also *Viraj, LLC v. Holder*, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

<sup>3</sup> The prior petition (with receipt number [REDACTED]) was filed in December 2018 and was denied in April 2021.

In light of the deficiencies described above, we disagree with and withdraw the Director's determination that the Petitioner qualifies for the EB-2 visa classification as an advanced degree professional. This issue must be resolved in any further filings.

## B. National Interest Waiver

Notwithstanding the issue of the Petitioner's qualification for the EB-2 visa classification, the grounds identified in the Director's decision are dispositive of this appeal. The Director denied the petition, concluding that the Petitioner did not establish that: (1) his proposed endeavor met the standard for national importance, (2) that he is well positioned to advance his endeavor, or (3) that on balance, waiving the job offer requirement would benefit the United States. Therefore, 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.

In a supporting cover letter, the Petitioner stated that his proposed endeavor is to develop and expand his own company, [REDACTED] which will "serve as a one-stop-shop that will link donors with social causes, thereby helping nonprofit organizations to develop and improve their marketing and fundraising strategies."<sup>4</sup> The Petitioner asserts that helping nonprofit organizations expand their access to capital, funds, grants, and endowments, will result in such organizations being able to provide a greater variety of services and have greater societal impact. The Petitioner also highlighted the importance of the "immensely positive and ripple economic effects that entrepreneurship – and related investments – offers [sic] the United States."

Supporting evidence includes the company's business plan, which contains industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's work experience, and information about the company's senior executives who will comprise the advisory board. Regarding future staffing, the business plan anticipated that the company would employ 10 personnel in year one, 18 in year two, 26 in year three, 34 in year four, and 42 in year five. However, the plan did not elaborate on these projections or provide evidence supporting the need for the additional employees. Further, although the plan offers revenue projections of \$535,324 in year one, \$1,094,226 in year two, \$1,706,954 in year three, \$2,232,171 in year four, and \$2,757,387 in year five, it does not adequately explain how these forecasts were calculated.

The record also includes general information and articles on such topics as the growth of the nonprofit sector in the United States and the wide breadth of fields covered by the organizations within that sector. It also includes the benefits of foreign direct investment in the United States, immigrant entrepreneurship and U.S. immigration laws and policies, as well as immigrants as contributors to economic growth after the COVID-19 pandemic, the impact of digital technology and operational innovation on company operations, global skilled labor shortages and the value of highly skilled

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<sup>4</sup> The record shows that [REDACTED] was established in March 2021. However, the record contains no evidence that the Petitioner has secured physical premises outside his primary residence to house the operation, or that he has progressed towards the personnel and financial targets forecasted in the business plan.

immigrants to the U.S. economy. Other articles generally address the role of entrepreneurship in U.S. job creation and economic development. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

However, the endeavor's substantial merit notwithstanding, the Petitioner has not established that his endeavor rises to the level of national importance. In denying the petition, the Director pointed out that in addressing the question of national importance, we focus on the proposed endeavor, not on the industry or profession to which the endeavor pertains. After applying this approach to the facts in the matter at hand, and contemplating the endeavor's proposed location in the State of Florida as well as its potential to employ 42 U.S. workers by its fifth year of operation, the Director determined that the record lacks sufficient evidence to show that the endeavor will be located in an economically depressed area or that its employment of 42 works would result in substantial positive economic effects for the region. Rather, the Director determined that the endeavor's impact would be limited to the Petitioner and his prospective business partners and clients, noting that the record does not establish that the Petitioner's endeavor would have broad implications on a national or global scale or that it would broadly enhance societal welfare or cultural enrichment. In sum, the Director concluded that the Petitioner's endeavor would not rise to a level of impact that is consistent with national importance.

On appeal, the Petitioner points to his 25 years of work experience and argues that the Director did not adequately consider his résumé and business plan, which outline his "vast experience in the field of endeavor" as well as his "credentials, expertise, [and] professional achievements." We note, however, that the Petitioner's skills, knowledge, and experience in his field 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 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. Although the Petitioner's statements reflect his intention to "help the U.S. stay competitive" and "produce income for the U.S. economy," he has not provided sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance.

The Petitioner also refers to "the ripple effects of his professional activities," asserting that his endeavor will "contribute to tax revenue, generate jobs for U.S. workers, and ultimately help increase the flow of money in the U.S. on a national level." However, the personnel and income projections that the Petitioner provided in his business plan are not sufficient to demonstrate substantial positive economic impact that would be broadly felt on a national or global scale. Furthermore, the Petitioner has not substantiated the growth projections in the business plan. And although the Petitioner emphasizes that he will establish his company in a Small Business Administration (SBA) HUBZone area in Florida thereby "generating jobs for U.S. workers in these underutilized areas, improving the wages and working conditions for the U.S. workers, and helping the local community bring investments to the region," he has not indicated that his endeavor would participate in the SBA HUBZone program, nor has he provided evidence to demonstrate that his endeavor will have substantial positive economic effects, particularly in an economically depressed area.

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. *See id.* at 893. Here, we conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employees and clientele to impact the nonprofit business consulting industry at a level commensurate with national importance.

Because the Petitioner has not established that his proposed endeavor is of national importance, he is not eligible for a national interest waiver under the *Dhanasar* analytical framework. As a petitioner must meet all three prongs of the framework to be eligible for a national interest waiver, we reserve our evaluation of whether the Petitioner is well positioned to advance his endeavor and whether, on balance, it would be in the national interest to waive the EB-2 classification's job offer requirement. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

### III. CONCLUSION

For the reasons discussed, the Petitioner has not established that he is eligible for the underlying EB2 classification as a member of the professions possessing an advanced degree. Further, he has not established that he merits, as a matter of discretion, a national interest waiver of the job offer requirement attached to this classification.

**ORDER:** The appeal is dismissed.