



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

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

In Re: 25760024

Date: JUL. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a social communications specialist providing marketing consultancy services, 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Profession is defined as of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.¹ 8 C.F.R. § 204.5(k)(3).

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,² 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.³

II. ADVANCED DEGREE

Neither the request for evidence issued by the Director nor the subsequent denial notice provided a determination of whether the Petitioner submitted sufficient evidence to show that he is a member of the professions holding an advanced degree. Therefore, we will reserve the issue of whether he qualifies for the underlying EB-2 visa classification.

III. NATIONAL INTEREST WAIVER

The Petitioner intends to continue to operate his business providing marketing consultation services in Florida. The Petitioner initially described his proposed endeavor as follows:

Guiding U.S. businesses on effective social communications methodology that makes sense for each company so as to lead to increased revenue, increased demand and thus, output of services for benefit of consumers and other beneficiaries, as well as for the benefit of industry development.... [I] will be...guiding and directing companies in the realm of social communication and, as my company expands beyond its base in Florida, I can contribute to the growth and visibility of more and more companies and industries throughout the nation.

The Director concluded that, while the Petitioner’s proposed endeavor has substantial merit, the Petitioner did not meet any of the three prongs of the *Dhanasar* framework. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his endeavor in order to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

¹ Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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).

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

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.

On appeal, the Petitioner submits a brief in which he asserts that the Director's decision was an "application of excessive scrutiny which reflected an abuse of discretion and was misaligned with the permissible and applicable burden of proof relating to adjudication of I-140 EB-2 NIW petitions," emphasizing that "the applicable standard of proof is that of a 'preponderance of the evidence.'"⁴ The Petitioner, however, does not explain how the Director misapplied the applicable standard of proof in analyzing the evidence of record.⁵ In fact, contrary to his contention of the Director's use of excessive scrutiny, the Petitioner later indicates in his brief that the Director did not sufficiently scrutinize the evidence. The Petitioner states the following:

While the TSC [Texas Service Center] comments on some (but not all) documentation submitted into the record, it does not detail in its decision a clear and comprehensive discussion as to why each piece of evidence proffered does not meet the preponderance of the evidence threshold. Rather, it merely makes general assertions that fail to specifically identify why the evidence fails to meet the evidentiary threshold of "preponderance of the evidence" which ultimately results in an abject denial of the Appellant's rights to due process and a miscarriage of justice.

Upon review of the record, it appears that the Director reviewed the entirety of the evidence submitted. The decision references and quotes various pieces of evidence in the analysis of the Petitioner's qualifications. As discussed above, we review the record de novo. 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.

In his appeal brief, the Petitioner asserts that the current evidence of record establishes his eligibility under the *Dhanasar* framework. The Petitioner highlights reference letters from individuals with whom he has provided marketing consultancy services, including clients from production companies; a logistics company providing import, export, and product storage services; and a church ministry. These letters detail the Petitioner's contributions to several projects and commend his work. These letters do not, however, demonstrate how the successful performance of his job establishes the impact of his consultancy services in the U.S. at a national level. We note that content in these letters concerning the Petitioner's job performance relates to the second prong of *Matter of Dhanasar*, an issue that will be reserved in this decision. We also note that these letters reference, in part, the Petitioner's work during a global health emergency that occurred after the filing date of the present petition. Because a petitioner must establish eligibility at the time of filing,⁶ we cannot consider this

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).

⁵ 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).

⁶ See 8 C.F.R. § 103.3(b)(1) (stating that a petitioner must establish eligibility for the requested benefit at the time of filing).

work as supporting evidence. Even if the work were to have occurred prior to the filing date, which it did not, it would also fall under the second prong of the *Dhanasar* framework.

To demonstrate the importance of his endeavor, the Petitioner emphasizes the inclusion of articles related to the field of marketing which discuss the digital economy, the demand for marketers, and the impact of brands on culture. The Petitioner also points to expert opinion letters from instructors at several universities. These letters provide commentary on the importance of social communications specialists to businesses and public relations teams, as well as describe the significance of entrepreneurs and differently sized enterprises within the economy. This information does not speak to the specifics of the Petitioner's endeavor to demonstrate whether it is of national importance.

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 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. Here, we conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employees and clients to impact either the marketing or communication industries more broadly at a level commensurate with national importance.

In addition, the Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. Specifically, he has not shown that his business activity stands to provide substantial economic benefits to Florida or to the United States. We note that the expert opinion letters describe the Petitioner's business in terms that largely resemble his business plan. As the Director's decision explained, neither the opinion letters nor the business plan's projections concerning the business are supported by probative evidence to demonstrate the credibility of the growth estimates forecasted. A petitioner must support assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. The business plan does not demonstrate that any benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. The Petitioner's business plan projects creating eight jobs by 2026; it is not clear how a business of the size and scope described will impact and positively affect the region in which these individuals will be located. Although the Petitioner asserts that his company will hire U.S. employees, he has not provided evidence to show that he would employ a significant population of workers in the region, or that his endeavor would offer the region or its population substantial economic benefit through employment

See also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.").

levels, business activity, or tax revenue. Neither the business plan nor the remaining evidence in the record demonstrate that the Petitioner's endeavor to continue to provide marketing consulting services through operation of a small business in Florida rises to the level of national importance. 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, as well as whether the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree. 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 that 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.