



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

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

In Re: 26400108

Date: JUN. 02, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a treasurer and controller, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *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. *See 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 Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner qualified for classification as a member of the professions holding an advanced degree or of exceptional ability<sup>1</sup> and 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 petition must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of

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<sup>1</sup> The Director's decision was the first instance in which the Petitioner was notified that evidence in the record did not demonstrate the Petitioner's categorical eligibility for EB-2 classification. And the Director's conclusion that the Petitioner was not categorically eligible for EB-2 classification cited evidence and facts that were not present in the record. Accordingly, we withdraw the Director's conclusion that the Petitioner was categorically ineligible for EB-2 classification. Nevertheless, the record does not contain sufficient evidence that the Petitioner is an advanced degree professional or an individual of exceptional ability. But we need not make a full determination of the Petitioner's categorical eligibility for EB-2 classification today because the national interest waiver issue alone is sufficient to determine the outcome of this appeal.

exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement would be in the national interest.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

## II. ANALYSIS

### A. Substantial Merit and National Importance

The Petitioner initially proposed to continue working in their field for U.S. companies as a treasurer and controller. The Director issued a request for evidence (RFE) for additional evidence and clarification of the Petitioner's proposed endeavor to determine its substantial merit and national importance. The record contains several items submitted initially with the petition, in response to the Director's request for evidence (RFE), and at appeal including but not to their support letter, professional plan and statement, industry reports/articles, recommendation letters, expert opinion, and

educational documents.<sup>2</sup> The Petitioner initially stated that they would “utilize [their] skills and knowledge to work as a Treasurer and Controller and make contributions of major significance to the corporate industry” in the United States. The Petitioner referred in their support letter to their “experiences” and “knowledge in the areas of finance, banking, and business controllership” as desirable to “boost U.S. economic growth, promote financial stability, and transform government-wide financial stewardship.” They elaborated in their professional plan and statement that they would help “companies plan, direct, and coordinate their financial targets.” The Petitioner’s endeavor would entail:

- Providing treasurer, account management, and business controllership services to U.S. companies and financial departments.
- Researching financial markets, conducting financial analysis, creating as well as improving financial and controllership policies.
- Managing budgets and expense accounts.
- Restructuring controllership, finance, and compliance areas.
- Advising executives on optimal financial strategies in regard to acquisitions.
- Negotiating debts, collections, and payment plans to help improve the financial health of companies.
- Developing, improving, and managing expense and collection system to better account for all costs and obtain dept repayment.
- Analyzing budget reports, accounts, and financial documents to help companies meet their goals.
- Creating U.S. jobs through managing companies’ finances, allowing them to collect on debts, save money, and make better investments.

The Petitioner’s response significantly departed from the proposed endeavor they indicated in their initial filing. The proposed endeavor morphed into the Petitioner effectively serving as the chief executive officer of their own entrepreneurial business. In the RFE response, the Petitioner transformed their proposed endeavor from a treasurer and controller offering services to American employers to an owner/operator of a commercial and residential cleaning company. The addition of the Petitioner’s entrepreneurial business did not enhance or clarify the Petitioner’s proposed endeavor to be a treasurer and controller providing services to American employers. To the contrary, it transformed the proposed endeavor into a wholly different one. Through this commercial and residential cleaning company, the Petitioner proposed to endeavor to provide a set of “high-level accounting, strategic planning, financial, business, and assets management, personnel management and training investment, risk management, and other consulting services across multiple industries including oil and gas, beverage, and cleaning services.” They proposed to assert responsibility over the administration and management of the cleaning company, support the role of the company’s managers, and perform the training of the company’s professionals and team development. None of their duties involved providing services resembling those performed by a treasurer and controller. In fact, the company’s business plan reflected that the company’s treasurer and controller duties would be shared between an administrative and financial manager and an administrative and financial analyst.

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<sup>2</sup> While we may not discuss every document submitted, we have reviewed and considered each one.

On appeal, the Petitioner essentially attempts to convince us that their many years of progressive experience in the financial services market renders any endeavor they propose to undertake in the United States raised to the level of national importance. They also highlight their ‘in-depth knowledge of the finance and business environment in Brazil.’ But the Petitioner’s claims are not persuasive. The first prong of the *Dhanasar* framework focuses on the proposed endeavor; not on the Petitioner’s qualifications to execute the proposed endeavor. The first prong of the *Dhanasar* analytical framework is consequently unconcerned with the individual Petitioner. So the Petitioner’s contentions about their successful career-to-date, as well as evidence and information of their achievements and recognition such that they are, are irrelevant to an examination of their eligibility under the first prong of the *Dhanasar* analytical framework.

The Petitioner’s materially significant transformation into an entrepreneur rendered their proposed endeavor ill-defined and amorphous. The Petitioner argues at appeal that their residential and commercial cleaning service will be a vehicle “helping U.S. companies identify strategies for restricting, perform cost benefit analysis of these strategies, develop financial tracking and reporting tools to help management monitor fiscal spend and ensure alignment to planned budgets” by “enhancing U.S. commercial interests” prompting “overall economic enrichment.” On appeal the Petitioner also attempts to demonstrate that their administration and management of a residential and commercial cleaning service in Florida will facilitate U.S. companies connecting with business opportunities in Brazil. The Petitioner provides no meaningful detail to specify how this could be accomplished other than an oblique reference to the Petitioner’s knowledge and familiarity with Brazil. It is difficult to comprehend how a residential and commercial cleaning company could provide complex financial and business consulting services for companies interested in global business as described by the Petitioner, and the record contains insufficient coherent evidence to explain this further.

The Petitioner’s ambitious expansion plans are not supported in the record. And it is unclear in the record how the Petitioner’s anticipated hiring spree for the proposed endeavor itself would have a substantial prospective positive economic effect beyond itself to broader initiatives commensurate with national importance.

Furthermore, the Petitioner’s intention to base their company in a Small Business Administration (SBA) HUBZone is unpersuasive. The Petitioner contends at appeal that the presence of their residential and commercial cleaning service in a HUBZone will “generat[e] jobs for U.S. workers in these underutilized areas, improving the wages and working conditions for U.S. workers, and helping local community bring investments to the regions.” The HUBZone program’s goal is to promote business growth in underutilized business zones with the goal of awarding 3% of federal contract dollars to companies that are HUBZone certified. Joining the HUBZone program makes a business eligible to compete for certain federal contracts in the “set-aside” category. There are several required qualifications to participate in the program, but the most dispositive requirement for purposes of our analysis is that the business seeking to participate in the HUBZone program must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. Whilst it is unknown and the record is silent about what if any federal programs exist in the “set-aside” category for residential and commercial cleaning services like the one proposed by the Petitioner, the record is crystal clear that the Petitioner’s proposed endeavor would be wholly owned and controlled by the Petitioner and that

the Petitioner is not a U.S. citizen, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. So the fact that the Petitioner's proposed endeavor may be in a HUBZone is wholly irrelevant to whether the Petitioner's endeavor rose to a level of national importance.

A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *See Matter of Katighak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition, such as converting a plan to be a treasurer and controller to U.S. companies into operating a residential and commercial cleaning service with aspirations to provide financial consulting, to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc Comm'r 1998). The Petitioner's transfiguration of their proposed endeavor from the initial petition to the response to the RFE introduced significant ambiguity into their proposed endeavor which prevented analysis into its substantial merit or national importance.

The *Dhanasar* framework cannot be applied to two dueling proposed endeavors. A petitioner must identify the specific endeavor they propose to undertake. *See Matter of Dhanasar*, 26 I&N Dec. at 889. It is not possible to determine the substantial merit and national importance of an endeavor when a Petitioner cannot consistently articulate the nature of the endeavor. So we conclude that the Petitioner has not established that their proposed endeavor is of substantial merit and national importance. And because the Petitioner has not established that their proposed endeavor has substantial merit and national importance, as required by the first *Dhanasar* prong, they are not eligible for a national interest waiver. We reserve our opinion regarding the second and third *Dhanasar* prongs applicability to this proposed endeavor as well as the Petitioner's eligibility for EB-2 immigrant classification. *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 find that they have not established that they are eligible for or otherwise merit a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.