



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

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

In Re: 27461722

Date: JUN. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an adapted physical education specialist/entrepreneur, 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 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.

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 they merit 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 discretion¹, grant a national interest waiver if petitioners show:

- 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.

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).

II. ANALYSIS

As indicated above, the first prong for a national interest waiver relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a “Definitive Statement” claiming:

I intend to continue using my expertise and knowledge to work as an Adapted Physical Education Specialist/Entrepreneur and contribute to the U.S. economy, and its societal welfare, through the development and expansion of my already registered U.S. company, [REDACTED] The business is a wellness center focused on combating obesity across the children and adult populations in the U.S. Explicitly, it is healthcare and aquatic fitness center that will facilitate and promote the benefits of aquatic sports, so as to invest in Americans’ wellbeing. It will also offer supervised physical exercises, as well as patient personalization services.

In addition, the Petitioner submitted [REDACTED] business plan and a wide range of industry articles and reports, such as adult obesity, physical activity guidelines, entrepreneurship, immigrants and the economy, immigration, wage and data information, and employment statistics. In response to the Director’s request for evidence, the Petitioner submitted an updated business plan and “Definitive Statement” claiming:

. . . [T]o create jobs and a profitable market, [REDACTED] will hire several qualified U.S. professionals. Although I will serve as the company’s Chief of Operations, the company still needs to fulfill other specialized positions in various departments, including Dietitians and Nutritionists, Physical Therapists, Coaches, Scouts, and other necessary positions. Over the years, the company will develop and direct a good part of its profits in expanding its operations, especially by hiring more American workers, increasing the quality and variety of services offered, and participating in courses, training, and workshops to further raise the quality of its portfolio.

In this context, the impact of my proposed endeavor is evident by generating about one hundred and eighty-five (185) jobs for U.S. workers across the United States. With an expected total payroll expense of \$14,061,237 million dollars. [REDACTED] is ready to boost local economies, specifically in the underserved business zones, of several states across the United States. This has the potential to attract investments and expand throughout the United States in the following years.

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 operating [REDACTED] For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance aspect of his proposed endeavor.

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. As indicated, the

Petitioner provided documentation relating to various industries and topics, ranging from the importance of entrepreneurship and small businesses to physical education and exercise. In addition, the Petitioner contends that his endeavor “is directly linked to U.S. National Initiatives and therefore, of National Importance,” and he “will work aligned with several national interests and national initiatives in the United States, including promoting the health and well-being of all citizens, promoting physical activity and healthy lifestyles, and ensuring that students with disabilities have access to high-quality physical education programs.” Here, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of owning and operating [REDACTED] rather than the importance of the national initiatives and interests, industries, or fields.² 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.

In addition, the Petitioner stresses his “twenty-nine (29) years of work experience.” However, the Petitioner’s experience, 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 that he proposes to undertake has national importance under *Dhanasar*’s first prong.

Moreover, 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 business plan claims that [REDACTED] “will take an approach to facilitating the benefits of aquatic sports to patient’s wellbeing in conjunction with supervised physical exercises that is geared toward patient personalization,” the record does not show through supporting documentation how his company stands to sufficiently extend beyond its prospective clients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. 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.

Finally, the Petitioner did not show his proposed endeavor offers substantial positive economic effects for our nation. The business plan does not reflect that his company’s future business activities and staffing levels stand to provide substantial economic benefits to specific regions or to the United States. While the five-year tax generation forecasts \$6 million, five-year revenue forecasts \$17.7 million, and five-year payroll expenses forecasts \$14 million, which all include state, regional, and national expansion, the business plan does not establish the benefits to the regional or national economy resulting from the company’s profits and revenues would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Similarly, although the Petitioner claims the business would create “about one hundred and eighty-five (185) jobs for U.S. workers across the United States,” 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 demonstrate that such hiring figures would utilize a significant population of workers in the area or would substantially

² The Petitioner’s evidence and arguments relate more to the substantial merit aspect of the proposed endeavor.

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 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.³

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.

³ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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).