



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 26968687

Date: JUNE 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.* Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.<sup>1</sup> *Id.*

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.

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<sup>1</sup> 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.

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>2</sup>, 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.

## II. ANALYSIS

The Petitioner proposes to work in the United States as a computer and information systems manager having worked in the computer and information systems business for more than 10 years in Brazil. He holds a bachelor’s degree in computer science from Universidade [redacted] in Brazil and a post-graduation certificate in business management from [redacted] in Brazil. The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree.<sup>3</sup>

However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar prong. The Director further found that the record does not satisfy the second or third Dhanasar prongs. Upon de novo review, we agree with the Director’s determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor a petitioner 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. Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner initially submitted a professional plan with his Form I-140 indicating that he intended to continue working in the field of information technology, “with particular expertise in the areas of software development, contract management, strategic business partnerships, financial management, and team development.” He further stated that he intended to lead an information technology organization for “a company that provides consumer products, medicines, or services that is enabled by cutting-edge technology to improve people’s lives.” The Petitioner explained his endeavor would “potentially impact” the United States by working with U.S. companies requiring his knowledge, contributing to the U.S. gross domestic product and generating tax revenue, working on large and highly complex information technology projects, enhancing technology for U.S. companies, and

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<sup>2</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).

<sup>3</sup> The record establishes that the Petitioner holds the foreign equivalent of a bachelor’s degree from an institution of higher education in the United States, and that he has at least five years of progressive, post-baccalaureate experience in his specialty. See 8 C.F.R. § 204.5(k)(3).

obtaining market and investment opportunities for U.S. companies. The Petitioner's initial description of the proposed endeavor does not provide details beyond his intention to work as a computer and information systems manager for U.S. organizations and businesses. The Petitioner did not include any specific plans or evidence about being an entrepreneur and starting an information technology consulting business with his initial submission of the Form I-140.

The Director issued a request for evidence seeking further information and evidence that the Petitioner meets each of the three prongs of the Dhanasar framework. In response, the Petitioner submitted a statement with further information about his proposed endeavor. He stated that he intended to utilize his experience and knowledge to be an executive level information technology product manager and an entrepreneur through a new company he incorporated in 2020 with his wife. The company will be an information technology consulting business, [REDACTED] which would "provide [information technology] product management consulting and online training services to small and medium-sized businesses" with a focus on financial products.

The Director found that while the proposed endeavor has substantial merit, the Petitioner did not demonstrate his endeavor has national importance. On appeal, the Petitioner contends that the Director did not apply the proper standard of proof and erred by not giving "due regard" to the evidence submitted, specifically the Petitioner's statement, business plan, letters of recommendation, industry reports, and articles.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed his evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

As the Director already determined that the Petitioner's proposed endeavor has substantial merit, we will only analyze whether the Petitioner's endeavor is of national importance. If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs. Upon de novo review, we find the Petitioner did not demonstrate that his endeavor satisfies the national importance element of Dhanasar's first prong, as discussed below.

On appeal, the Petitioner claims that his proposed endeavor to work as an executive level information technology product manager for his new business will "generate substantial ripple effects upon key commercial and business activities on behalf of the United States – namely, servicing the information technology of U.S. companies. His proposed endeavor is a vital aspect of U.S. companies' operations and productivity - which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy." The Petitioner emphasizes his professional experience and education to demonstrate he will be sharing his expertise and skills with the product management and online training services to be provided by his business. The Petitioner further argues on appeal that his "career has helped him advance his proposed endeavor which will benefit the [United States] by creating jobs and economic stability. . . . The company will provide services that will result in

improved product management and, by extension, revenue increase for a significant number of American businesses.” (emphasis in original). And he asserts the training services “will result in higher proficiency of industry professionals and help bridge the talent gap.” (emphasis in original).

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. See Dhanasar, 26 I&N Dec. at 889. The Petitioner’s business plan explains that his new product management and online training services business will “help small and medium-sized businesses in the U.S. thrive and grow . . . .” The business intends to initially offer product management services to businesses located in specific Florida cities, expanding to other metropolitan cities throughout the United States by its third year. The business would initially have an office in the [redacted] area “to take a stand and create impact, generating jobs in Tech industry for U.S. workers in underutilized areas, improving the wages of U.S. [sic] workers, helping to attract investments in the region, and thus encouraging economic development.” The plan also explains that the business would be dedicated to diversity and inclusion since diversity remains an issue in the information technology sector.

The business plan provides an overview of the expected economic growth of the management consulting industry in the United States over the next five years. The Petitioner’s business intends to focus on product management services related to financial products due to the expected growth and demand in the industry. The business will also offer product management training to individuals throughout the United States. The business plan explains the business’s services; its marketing strategy; the Petitioner’s chief executive role for the business; his professional expertise; and its personnel plan for hiring 84 employees over the next five years. The business plan also provides financial forecasts over a five-year period, including total sales projected at over ten million dollars in five years, salaries of over 8.5 million dollars in five years, a net profit of over \$280,000 in five years, a balance sheet with projected net worth, and the projected return on investment over five years.

However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner also has not provided corroborating evidence, aside from claims in his business plan, that his business’s future staffing levels and business activities stand to provide substantial economic benefits to underutilized areas of Florida and the United States. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that the creation of 84 jobs and paying wages of 8.5 million dollars in five years rises to the level of national importance.

In his statement, the Petitioner emphasizes a need for information technology professionals for small and medium sized businesses due to growth in the industry and businesses requiring technology improvements since the COVID-19 pandemic. He highlighted his professional experience, an invitation to be on an advisory panel at the University of [redacted] and articles recognizing his professional achievements and work advocating diversity, equity, and inclusion for information technology. The Petitioner’s statement also indicates the need for entrepreneurs to offer new and innovative products, as well as, to help increase national income and tax revenue, employment opportunities, and salaries.

The Petitioner's claims that his business will benefit the U.S. economy with new jobs, improved wages, and tax revenue, has not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide economic benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that his proposed job duties as an executive level information technology product manager for his business would impact the information technology product management industry more broadly rather than benefiting his proposed clients and their customers, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The Petitioner further claims on appeal that he demonstrated national importance with his resume and recommendation letters from colleagues and clients, which discuss his work experience and expertise as a computer and information systems manager. The Petitioner argues that his extensive experience and expertise place him in a position "to more rapidly and efficiently provide any U.S. firm or company with a competitive advantage, regardless of sector or industry." However, these documents relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. 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. *Id.* For instance, a letter from the Petitioner's colleague emphasizes the Petitioner's information technology achievements for a supply chain project and a company's crop science division, as well as his strong cultural development skills increasing qualified diverse employees. Letters from other coworkers similarly attest to the Petitioner's information technology experience and his importance to information technology projects for his employers.

We acknowledge that the Petitioner provided valuable computer and information systems manager services for his employers in the past, but the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of his proposed endeavor rising to the level of 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. *Dhanasar*, 26 I&N Dec. at 893.

In addition, these letters do not show that the Petitioner's proposed endeavor will substantially benefit the U.S. business industries and the field of computer and information systems management, as contemplated by *Dhanasar*: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* The letters do not demonstrate that the Petitioner's work will have national or global implications in the field of computer and information systems management.

To further support the national importance of his endeavor, the Petitioner submitted an expert opinion from [redacted] professor of computer science, information systems, and cyber security at [redacted] University in [redacted] Oregon. However, the opinion claims that the Petitioner would be working in an area of national importance, instead of focusing on the Petitioner's proposed

endeavor. It describes how the United States will continue to have a major shortage of information technology workers based on growth in the industry and the demand for talent continues to exceed supply. The opinion focuses on the need for information technology professionals and how the Petitioner's experience makes him well positioned to fill the need, instead of focusing on the Petitioner's specific endeavor having a prospective impact in the field of computer and information technology management field.

The opinion further explains that the Petitioner's endeavor has national importance based on Brazil's large market opportunities for U.S. businesses. The opinion indicates that while U.S. companies have many market challenges when looking to do business in Brazil, the Petitioner's extensive experience in the Brazilian market make him well positioned to advise U.S. companies on information technology projects planning to operate in Brazil. The opinion also notes that the Petitioner can contribute to improving and facilitating cross-border transactions between the United States and Latin America; assist U.S. corporations and U.S. investors interested in making investments and developing commercial relationships in the Brazilian market; and increasing foreign direct investment in the U.S. economy by supporting Latin American investors to invest in IT projects in the United States. However, the record does not demonstrate that the Petitioner's proposed endeavor includes collaborative works between U.S. companies and Latin America companies, or that he is actively targeting U.S. companies that do business, or plan to do business in Latin America or Brazil. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. See *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

The Petitioner further claims national importance of his proposed endeavor based on industry reports and articles describing the shortage in the United States of information technology workers and the growth of the industry. The reports explain the tech career outlook, the importance of information technology for businesses, and ways to fill information technology jobs. Additional articles relate to the importance of augmented and virtual reality technology; the need for employees in the fields of science, technology, engineering, and math; the agility of software development teams since the COVID-19 pandemic; and the need for mobile apps.

We recognize the importance of the information technology industry and related careers; however, working in the information technology field or starting an information technology product management consulting business with online training services is insufficient to establish the national importance of the proposed endeavor. 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 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. The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor.

The Petitioner does not demonstrate that his proposed endeavor extends beyond his future clients or employers, to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. The economic benefits that the Petitioner claims depend on

numerous factors and the Petitioner did not offer a sufficiently direct evidentiary tie between his information technology product management work and the claimed economic results.

Because the documentation in the record does not sufficiently 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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third 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 find that the Petitioner has not established eligibility for 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.