



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

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

In Re: 26958639

Date: JUN. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a food scientist, seeks second preference 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 EB-2 immigrant 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established 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 (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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

¹ *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

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

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she 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; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national 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 foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) 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. *Id.* at 890-91.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. 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.

The Petitioner's proposed endeavor is to continue his career "as a Food Scientist in the field of Wheat Research and production, Food Safety, Education and Training" according to the document entitled "A Plan for Future Activities in the US." However, the Petitioner's initial description of the proposed endeavor does not provide any other details beyond his intention to work as a food scientist for an unidentified U.S. government entity or pasta producing business. The Petitioner further states that he will pursue research as a graduate student assistant and help students to explore the area of food science, but the record does not include specific research papers or plans corroborating his claims.

The Director's request for evidence (RFE) sought further information and evidence that the Petitioner meets each of three prongs of *Dhanasar* framework. In response, the Petitioner introduced a business plan for a company named [REDACTED] and proposed to manufacture and sell pasta, as well as provide training on food quality control to other food industries. The Director found the Petitioner's newly proposed endeavor to be contradictory in nature and issued a notice of intent to deny (NOID) asking for clarification. In response to NOID, the Petitioner resubmitted his original plans of working as a food scientist for a government entity or pasta company. The Petitioner also alluded to his unpublished post-graduate research on optimum energy use and reduction of food waste in wheat pasta production but did not provide any corroborating evidence of his research. The Director ultimately denied the petition, concluding that the Petitioner's proposed endeavor has substantial merit, but not national importance.²

On appeal, the Petitioner submits a one-page statement contending that his proposed endeavor is of national importance as it will improve the quality of the wheat grain products and thereby improve the health of many Americans.³ The Petitioner provides several articles regarding importance of wheat-based products and their health benefits for the U.S. population. However, merely working in an important field 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.*

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. Likewise, the record here does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his potential employers to impact the field of food safety and production more broadly at a level commensurate with national importance. Instead, the record contains articles emphasizing importance of food safety and foodborne illness, as well as recommendation letters from the Petitioner's former co-workers stating that the Petitioner is a dedicated employee who contributed to reducing food waste and improving quality and safety of pasta production process at the place of his employment. These letters and industry articles do not discuss any particulars of the Petitioner's specific endeavor or its prospective impact rising to the level of national importance.

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. Here, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation

² The Director did not analyze the second prong - whether the petitioner is well-positioned to carry out his endeavor - but concluded that he also did not meet the third prong of *Dhanasar*.

³ The Petitioner stated on the Form I-290B that he will not be submitting a brief and/or additional evidence. As the Petitioner makes no other claims regarding other factual or legal errors made by the Director, we deem them waived. *Matter of Zhang*, 27 I&N Dec. 569, 569 n.2 (BIA 2019) (finding that issues not appealed are deemed as abandoned); see also *United States v. Fernandez Sanchez*, 46 F.4th 211, 219 (4th Cir. 2022) (finding the failure to raise arguments regarding eligibility waives those arguments on appeal).

attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's employment within the field of food safety would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.*

In addition, the Petitioner's business plan for [REDACTED] by itself does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner asserts that his experience in the pasta industry will "attract restaurants in purchasing Company's artisan pasta" in [REDACTED] Maryland where the company will be located. The Petitioner further claims that [REDACTED] will "increase its gross revenues from \$1,030,300 in Year 1 to \$1,807,785 in Year 5" and "increase its total employee count to seven, with payroll expenses starting at \$193,000 in Year 1 which will rise to \$326,460 in Year 5." Yet aside from this business plan, the Petitioner has not provided corroborating evidence that his company's future staffing levels and business activity stand to provide substantial economic benefits to a region or the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Based on the foregoing, we find that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's 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.