



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

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

In Re: 27360884

Date: JUNE 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks 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 Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner 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. 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 is in the national interest.

While 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, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

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 a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor, in a document titled "Definitive Statement," as a plan "to continue using my expertise and knowledge, gained through my over 20 years of experience, to serve as a [c]hief [e]xecutive – [e]ntrepreneur at [REDACTED] . . . in Florida . . . specialized in offering on-demand services for medium-sized cargo transport throughout the American territory, serving individuals and companies with specific needs." The Petitioner further stated, "the company will optimize clients' supply chain management strategies and reduce their commercial shipping costs. It will offer clients comprehensive supply chain management strategies for ground transportations." The Petitioner also stated that he intends to hire "a total of 42 American workers by year five (5)" and pay "taxes totaling US \$615,044 over the same five years."

In a request for evidence (RFE), the Director acknowledged that the proposed endeavor appears to benefit his company and its clients; however, the Director informed the Petitioner that the record "does not convey an understanding of how the [P]etitioner's proposed employment activities stand to have a broader impact on his field. Furthermore, the [P]etitioner has not demonstrated that the specific endeavor that he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects." Accordingly, the Director requested additional evidence that may establish the proposed endeavor has national importance.

In response to the Director's RFE, the Petitioner reiterated his education and prior work experience, he referenced the "Definitive Statement" already in the record, he resubmitted a copy of the [REDACTED] [REDACTED] business plan already in the record, and he submitted generalized industry reports and articles.

In the decision, the Director acknowledged the documents the Petitioner submitted in response to the RFE; however, the Director found that the Petitioner "has not established that his proposed work has implications beyond his current employer (or any prospective employers or self-owned company), their business partners, alliances, clients or his workplace at a level sufficient to demonstrate the national importance of his endeavor." The Director further found that the record does not establish "that the [P]etitioner's employment activities in the United States will have a broader impact on the

transportation field.” The Director also acknowledged that the Petitioner anticipated hiring 42 workers within the first five years of operation; however, the Director found that the record “does not demonstrate that the benefits to the regional or national economy resulting from his undertaking would reach the level of ‘substantial positive economic effects’ contemplated by *Dhanasar*.” Therefore, the Director concluded that the record “does not establish that the [P]etitioner’s proposed endeavor meets the national importance element of the first prong of [the] *Dhanasar* analytical framework.”

On appeal, the Petitioner reiterates his education and prior work experience and he asserts, “the U.S. would benefit from investing in well-versed business professionals such as the [P]etitioner, who are knowledgeable regarding potentially profitable markets for U.S. companies in regions that are economically and politically strategic, yet extremely complex.” The Petitioner adds that the “proposed endeavor will have multiple positive effects on the U.S. marketplace, thus enhancing business operations on behalf of the nation, and contributing to a streamlined economic landscape.” The Petitioner further states that the “proposed endeavor is clearly of national importance, when considering how much a professional with his caliber can contribute to the national interests, and to the U.S. economy, regardless of a labor certification.”

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

The Petitioner’s emphasis on appeal on his education and prior work experience in the context of whether the proposed endeavor has national importance is misplaced. An individual’s education and prior work experience are material to the second *Dhanasar* prong, whether the individual is well positioned to advance the proposed endeavor, but they are immaterial to the first *Dhanasar* prong, whether *the proposed endeavor* has both substantial merit and national importance. See *id.* at 888-91. We note that the Petitioner also generally asserts on appeal that “[i]ndustry [r]eport[s] and [a]rticles . . . demonstrate the national importance of the [P]etitioner’s proposed endeavor[,] as well as the steep shortage in the U.S. of professionals with his profile in the field.” However, as noted above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” See *id.* at 889. The general industry reports and articles in the record, referenced by the Petitioner, do not address the specific proposed endeavor nor do they elaborate on how the proposed endeavor may have national or even global implications within a particular field, significant potential to employ U.S. workers, or other substantial positive economic effects. See *id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. 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 conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.