



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

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

In Re: 27425074

Date: JUN. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an 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 eligibility 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 the merit of 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:

- 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

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. At initial filing, the Petitioner provided a personal statement indicating:

My proposed endeavor is to continue my career in the United States as an Entrepreneur/Business Developer. Specifically, I want to expand my business activities to the United States, through the creation of technology companies, and consulting startups in the area of application software, and online sales.

I will utilize my technical expertise and administrative experience – which I have acquired over 30 years – to develop innovative applications that, in addition to being commercially profitable, will promote local development, while being ecologically sound.

....

My career plan in the United States is to continue working as an Entrepreneur/Consultant, developing new enterprises for the U.S. market, and generating more direct and indirect jobs through my endeavors. I intend to continue designing innovative strategies, disrupting industry practices, and maintaining good working relationships with investors, identifying any opportunities for cross-border projects through extensive research and development.

I have one future project that I have already identified, and will provide more information herein:

Food Circle

This would be an online application software that integrates restaurants, delivery people, and consumers, offering unique advantages for each party involved. Although there are already numerous players in online delivery and restaurants, there is no platform that contemplates neighborhood circles solutions.

....

I can also provide my business know-how and IT knowledge to already established businesses, as well as start-up companies in the United States. Start-ups may be small companies, but they can play a significant role in economic growth. They create more jobs, which means more employment, and more employment means an improved economy. Not only that, start-ups can also contribute to economic dynamism by spurring innovation and injecting competition. New entrepreneurs can bring new ideas to the table, much needed to stir innovation and generate competition.

The business planning that I can provide to U.S. companies will lead to improvements for their financial health, growth, and success. Further, the positive impacts that result from my knowledge, experience, and expertise will not be confined to a single business for whom I work with. I am also fully capable of providing financial and business administration consulting services to a wide array of business simultaneously.

Through my consulting work, I can help many companies become and stay profitable. This is extremely important in the current environment where the U.S. economy is working to improve from the negative effects of the COVID-19 pandemic. I can help contribute to the economic prosperity of the United States, as well as ensure the economy continues to increase the number of employment opportunities for Americans.

Overall, through my proposed endeavor, I will help U.S. companies understand internal and external factors, manage its daily activities seamlessly, and thus, build and continue to improve its overall productivity and competitive standing in the market. This is because my work will allow companies to make efficient use of their resources like labor, raw material, money, and others.

The Director indicated the Petitioner demonstrated the proposed endeavor's substantial merit and national importance, thereby satisfying the first prong of the *Dhanasar* framework. Although we agree with the Director relating to the substantial merit aspect, we do not concur with the Director regarding the national importance part of the Petitioner's proposed endeavor. Accordingly, we will withdraw the Director's finding for this issue, discussed below.

The Petitioner submitted various industry articles and reports, such as the economic and fiscal effects of immigration, immigrant entrepreneurs, entrepreneurship, online food delivery, employment hiring, local labor demands and market conditions, small businesses, startups, and business advantages. 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. Here, the Petitioner must show the national importance of his proposed endeavor of providing his entrepreneurial services to companies rather than the importance of entrepreneurship, small businesses, startups, or any of the related 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 referenced his "technical expertise and administrative experience." However, the Petitioner's experience, skills, expertise, and abilities relate to the second prong of the *Dhanasar*

² The Petitioner's arguments and evidence relating to the importance and benefits of the industries or fields in which he would work within or involves his proposed endeavor pertains more to the substantial benefit aspect of the proposed endeavor rather than the national importance part.

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. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how his proposed endeavor largely influences the field and rises to the level of national importance. In *Dhanasar*, we determined 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 does not show through credible, supporting documentation how his anticipated entrepreneurial/consulting services stand to sufficiently extend beyond the particular companies, if any, who may utilize his consulting services to impact the field or industry or the U.S. economy more broadly at a level commensurate with national importance. Similarly, although he discussed his development of “Food Circle,” including his claim in response to the Director’s request for evidence that “his online application has already developed into a fully functional prototype,” the Petitioner did not establish the broad impact of this online application rather than limited to the businesses who decide to utilize it, if any.

Furthermore, the Petitioner did not demonstrate how his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the Petitioner submitted a business plan for [REDACTED] the claims do 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.³ While the revenue forecasts \$540,081 in year 1 to \$1,800,00 in year 5, the business plan does not establish the benefits to the regional or national economy would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Similarly although the plan claims the business would create three jobs in year 1 to five jobs in year 5, 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 show that such employment figures would utilize a significant population of workers in the area or would substantially 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. Therefore, we withdraw the Director’s finding regarding the national importance aspect of *Dhanasar*’s first prong. Accordingly, 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.⁴

³ The business plan indicates [REDACTED] is a wholesaler, retailer and e-tailer of a range of high quality consumer-oriented leisure products, including sporting goods, camping equipment, games, toys, computer games, and consoles,” “offers an ample variety of housewares, office accessories, and automobile products,” and “[t]heir local physical presence in [REDACTED] will allow from same day delivery”

⁴ 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude 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.