



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

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

In Re: 25611867

Date: MAR. 09, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a product manager, seeks employment-based second preference (EB-2) 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 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 was eligible for or merited a national interest waiver. 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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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, 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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

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).

- 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

In order to be eligible for a national interest waiver, a petitioner must first establish eligibility under the EB-2 immigrant classification. The Director's decision did not address this initial requirement. The record includes copies of two diplomas earned by the Petitioner, master of science degrees in international business and international marketing, received from [REDACTED] Business School in 2018 and 2019, respectively. This evidence demonstrates that the Petitioner is a member of the professions holding an advanced degree, and therefore qualifies for the underlying EB-2 classification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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 Petitioner initially stated that his proposed endeavor was to continue to work as a product manager for his employer at the time, but did not provide any specifics regarding this endeavor. In response to the Director's request for evidence (RFE), he submitted a statement indicating that he proposed to work as a product manager for a different company that employed him at the time of the RFE, and listing his duties in this position.

In his appeal brief, the Petitioner initially points out three errors in the Director's analysis of this prong: referring to the Petitioner twice by the incorrect gender, discussing the national importance of his proposed endeavor in terms of his "patients," and an inconsistent concluding statement when analyzing under the first prong of the *Dhanasar* framework. Although these errors are regrettable and reflect a lack of care in the drafting of the decision, after review it does not appear that they were material to the Director's ultimate conclusion regarding the Petitioner's eligibility. The Director stated three times that the Petitioner's proposed endeavor had not been shown to be of national importance before erroneously stating that the first prong was met, and he acknowledged the proposed endeavor's title of "product manager" and field as marketing.

The Petitioner also asserts that the Director disregarded evidence in the record concerning the national importance of his proposed endeavor, including his statement, letters from his former and current employers, documentation concerning the marketing profession and small businesses in the United States, and three expert opinion letters. We will focus on this evidence below.

In addition to describing his duties in his current position, the Petitioner notes in his statement that his employer "is focused on helping small companies succeed, by offering easy to understand [insurance] policies at an affordable price." He also describes a project he is working on for his employer that he asserts has generated revenue for the company and necessitated the hiring of two additional employees, and has the potential for creating the need for three more hires.

The two letters from the Petitioner's current employer also discuss the economic impact of his work as a product manager "on the company, the insurance industry, and small business owners across the country." Turning first to the assertions about the impact on small businesses and the insurance industry, the Petitioner conflates his proposed endeavor with his current employment. As mentioned above, the analysis in the first prong under the *Dhanasar* framework is prospective, focusing on the merits of the proposed endeavor, and is not defined by a petitioner's occupation at the time of filing. There is nothing inherent to the proposed endeavor of employment as a product manager that would have substantial positive economic effects on a particular industry or small businesses in the United States. Notably, the Petitioner did not make these claims about his employment as a product manager with a cosmetics company in his initial filing.

In addition, while the Petitioner asserts that the economic effects of his proposed endeavor will reach beyond his employer to impact the American workforce and national economy, the record does not support this assertion. One of the letters from his current employer states that one of the projects led by the Petitioner is expected to add nearly \$2 million in revenue for the company, and concludes that he is extremely valuable to the company. But it does not indicate that this would have any broader implications for the national economy, and neither letter supports the Petitioner's claims of potential job creation. See *Dhanasar* at 889-890. The Petitioner also submitted letters from his previous employers, but they describe his position and contributions to those companies and are therefore not relevant to the potential prospective impact of his proposed endeavor.

The Petitioner additionally refers to articles, submitted in response to the Director's RFE, which broadly discuss the importance of marketing in general to economic activity. Another article reports that companies' expenditures on marketing grew during the COVID-19 pandemic. While these materials help to show that the Petitioner's proposed endeavor is in an area of substantial merit, business, they do not demonstrate that the potential prospective impact of his work as a product manager within the broader field of marketing would have substantial positive economic effects. *Id.* As the focus of the first prong of the *Dhanasar* analytical framework is on the specific endeavor that a petitioner proposes to undertake, broad statements about the national importance of a particular field are insufficient to demonstrate that a petitioner's specific proposed endeavor meets the first prong.

Further, the Petitioner argues that the Director did not sufficiently consider three expert opinion letters which were submitted with his RFE response. On review, these letters do not establish the national importance of his proposed endeavor for the same reasons previously discussed. For example, Associate Professor [REDACTED] University bases his opinion of the national importance of the Petitioner's proposed endeavor on his current employer's position as an insurance company, the importance of small businesses and the effects of the COVID-19 pandemic, and a projection that he "will be invited to speak at conferences, seminars, symposiums, and other professional events." But the Petitioner has not indicated that his proposed endeavor includes speaking at professional events.

Similarly, Adjunct Associate Professor [REDACTED] University makes the same unsubstantiated projection of the Petitioner's activity as a speaker, and focuses on the broader impact of the marketing profession rather than the Petitioner's specific endeavor.

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* We note that all three letter writers provide opinions regarding the Petitioner's eligibility for an immigration benefit, yet none claim expertise in immigration law and policy.

For all of the reasons stated above, we conclude that the Petitioner's proposed endeavor is of substantial merit, but that he has not established its national importance, and has therefore not met the first prong in the *Dhanasar* analytical framework. As a petitioner must meet all three prongs of the framework to be eligible for a national interest waiver, we reserve our evaluation of whether the Petitioner is well positioned to advance his endeavor and whether, on balance, it would be in the national interest to waive the EB-2 classification's job offer requirement. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has established his eligibility for the EB-2 classification as a member of the professions holding an advanced degree. However, he has not established that he is eligible for, and otherwise merits, a waiver of the job offer requirement, and thus of a labor certification. The petition will remain denied.

ORDER: The appeal is dismissed.