



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

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

In Re: 25592044

Date: MAR. 13, 2023

**Appeal of Nebraska Service Center Decision**

**Form I-140, Immigrant Petition for Alien Workers (Advanced Degree, Exceptional Ability, National Interest Waiver)**

The Petitioner, a project 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 Nebraska Service Center denied the petition, concluding the record did not establish the Petitioner's eligibility for a national interest waiver under the Dhanasar framework. 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, 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>1</sup>, grant a national interest waiver if the petitioner demonstrates that:

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<sup>1</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).

- 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 earned the foreign equivalent of a bachelor's degree in civil engineering and has at least five years of progressive post-baccalaureate experience in this area. Therefore, he qualifies for the underlying EB-2 classification as an advanced degree professional. The remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the Dhanasar framework. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The first prong, substantial merit and national importance, focuses on the specific endeavor 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. To establish national importance, the Petitioner must demonstrate the proposed endeavor's impact. 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.* at 889.

The Petitioner's proposed endeavor is to continue to operate his own business [REDACTED] a company specialized in civil engineering services. Specifically, the Petitioner intends to use his company to assist clients in the evaluation of civil engineering projects with a particular focus on roads and bridges, as well as to offer procurement, consulting, and project management services. [REDACTED] target market includes the Florida Department of Transportation (FDOT) projects and private sector projects primarily in Florida. The record demonstrates that the Petitioner's proposed endeavor has substantial merit.

To support a finding of national importance, the Petitioner emphasized the importance of highway and bridge infrastructure. He provided industry reports and articles concerning the strong connection between highway travel and the nation's gross domestic product (GDP). Although state and local governments are generally responsible for the cost of highway maintenance and construction, the Petitioner provided reports on the economic impact of federal aid for highways. Specifically, he emphasized that the federal government currently provides federal aid for certain highways and bridges deemed integral to nation's economy. The Petitioner also provided articles and reports demonstrating the need for more Science, Engineering, Technology, and Mathematics (STEM) graduates, highlighting the economic importance of STEM professionals, specifically civil engineers, and stressing the demand for and shortage of engineers. The Petitioner offered statistics about Florida's growing population and pressing need for highway and bridge infrastructure, as well as the impact of natural disasters on aging or inferior infrastructure.

Although we agree that highway and bridge infrastructure, STEM fields, and civil engineering are important and may be the subject of national initiatives, we conclude that this does not necessarily establish the national importance of the proposed endeavor. When 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 “the specific endeavor that the foreign national proposes to undertake.” See *id.* at 889. Much of the Petitioner’s evidence relates to the importance of the industries and professions, rather than his specific proposed endeavor. Therefore, we conclude that the articles, reports, and statistics do not sufficiently support a finding that the proposed endeavor has national importance.

We reviewed the recommendation letters from current and former colleagues. Although some of the authors state that the Petitioner offers “innovative ideas” and “alternative solutions,” they do not describe how these ideas and solutions affect the fields of civil engineering, infrastructure, or project management more broadly. Although the Petitioner may customize solutions, the record does not demonstrate that his skills differ from or improve upon solutions already available and in use in the United States. Stated another way, the recommendation letters do not support a finding that his proposed endeavor will have any implications within a particular field. The Petitioner’s endeavor may impact the companies he works for and their clientele, but the record does not establish that his proposed endeavor stands to impact the field as a whole.

The authors praise the Petitioner’s skills, knowledge, abilities, and experience, as well as describe his duties and the results he achieved on specific projects and for specific employers. However, skills, knowledge, and education relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the Petitioner’s specific endeavor has national importance under *Dhanasar*’s first prong. While the authors hold the Petitioner in high regard, none of them describe the proposed endeavor or explain why it has national importance. Accordingly, these letters are not probative of the Petitioner’s eligibility for a national interest waiver under *Dhanasar*’s first prong.

On appeal, the Petitioner relies primarily upon evidence and arguments he previously provided.<sup>2</sup> He emphasizes federal spending on highway systems, the demand for engineers, and the shortage of engineering staff in construction companies. The Petitioner states that he provided evidence of the proposed endeavor’s broader impact, including the high demand for infrastructure, particularly in Florida, the importance of Florida’s highways, how Florida contributes to the GDP, and how he offers green alternatives. Nevertheless, the record does not suggest that the Petitioner’s work would meet the current demand for project managers and civil engineers, address the shortage in these and related fields, or extend beyond his employers and clients.

Although the Petitioner directs our attention to his business plan, stating that it contains evidence of the proposed endeavor’s significant potential to employ U.S. workers, we conclude that it does not contain sufficient information about the number of direct or indirect jobs the endeavor will create. The business plan does, however, project that by year three [REDACTED] will pay \$52,300 in salary and wages, as well as earn nearly \$80,000 in profit. While, these are commendable projections, the Petitioner has not provided a sufficient foundation for the calculation of these figures, nor has he explained how these figures, even if achieved, would affect the economy to such an extent as to rise to a level commensurate with national importance. The record contains insufficient information and

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<sup>2</sup> Although, the Petitioner references exhibit numbers, the exhibits in the initial filing and request for evidence (RFE) response are lettered, not numbered.

evidence regarding projected U.S. economic impact or job creation attributable to his specific work. Therefore, we conclude the record does not show benefits to the U.S. regional or national economy resulting from the Petitioner's employment would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner continues to rely upon the merits of the services he will provide, his personal and professional qualities, and the importance of transportation infrastructure and engineering. However, neither the evidence nor arguments sufficiently demonstrate the proposed endeavor's national importance. The documentation does not establish eligibility under the first prong of the *Dhanasar* precedent decision. Therefore, 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* would serve no meaningful purpose.

### III. CONCLUSION

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER:     The appeal is dismissed.