



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

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

In Re: 22645267

Date: MAR. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, 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.¹ *See* section 203(b)(2)(B)(i) of the Act. 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 record did not establish that the Petitioner qualifies for 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.

On appeal, the Petitioner contends the Director applied a stricter and higher standard of proof, and erroneously applied the law without properly reviewing the evidence. The Petitioner also claims that his proposed endeavor is of national importance since it will create jobs for Americans, leading to an improved economy. He also states that if the petition is not approved, the Petitioner will withdraw funds and assets from the U.S. business, and his employees will lose their jobs leading to a harmful impact on the local community and the national economy.

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The record indicated the Petitioner is the owner of

¹ USCIS records indicate an immigrant visa petition filed by the Petitioner was approved on October 22, 2022. Each petition filing is a separate proceeding with a separate record. *Hakimuddin v. DHS*, Civ No. 4:08-cv-1261, 2009 WL 497141, at *6 (S.D. Tex. Feb. 26, 2009); *see also Larita-Martinez v. INS*, 220 F.3d 1092, 1096 (9th Cir. 2000) (stating that the "record of proceedings" in an immigration appeal includes all documents submitted in support of the appeal).

companies that own and operate three chain pizza restaurants in Florida. The business plan stated that by its fifth year in business, the Petitioner's company would grow in revenue and employ 70 to 140 individuals. However, the Petitioner did not sufficiently show the job creation implications of his specific proposed endeavor, or that increases in company revenue attributable to his work stood to substantially affect economic activity. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. While the Petitioner's five-year sales forecast indicates that his future projects have growth potential, it 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 *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). The Director weighed the law and facts of this case appropriately, and the petition will remain denied.

ORDER: The appeal is dismissed.