



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

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

In Re: 24844852

Date: MAR. 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an economist, seeks second preference 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 EB-2 immigrant 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he 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. 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 (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*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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 second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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. *Id.* at 890-91.

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree, as the record indicates that the Petitioner has a master's degree in economics. The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Director concluded that the Petitioner had not sufficiently established the substantial merit and the national importance of his proposed endeavor as required by *Dhanasar*'s first prong. The Director identified the Petitioner's endeavor as "provid[ing] university admission and other educational services to prospective Nigerian students."<sup>2</sup> The Director concluded that the Petitioner's endeavor does not have substantial merit because it "will likely make some economic impact" but not a "significant economic impact or possess the potential to create a significant cultural impact." The

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<sup>2</sup> The Petitioner initially listed his occupation as "economist" and "AWS solution professional" in Part 5 of the Form I-140. The Petitioner's "Application Package for the EB2 NIW" discusses how his educational credentials in economics and Amazon Web Services (AWS) certification are beneficial to the United States' national interest, in addition to his educational consulting company.

Director also determined that the record is insufficient in establishing that the Petitioner's work will "serve to stimulate significant job growth, create a significant economic impact, or make a national or global impact" and does not show likelihood of Nigerian students being admitted by which "a quantifiable economic impact" can be measured. On appeal, the Petitioner claims that the Director's decision was "inconsistent" with the analytical framework of *Dhanasar* because the Director required showing of a significant economic impact or quantifiable economic impact.

The Director's decision lacks analysis in finding that the Petitioner's proposed endeavor does not have substantial merit. We agree with the Petitioner's claim that it is not required to demonstrate guaranteed success by showing likelihood of admitted students and thus show a "quantifiable" impact. *Dhanasar* states that a potential to create a significant economic impact is a favorable factor but is not required, as an endeavor's merit may be established without immediate or quantifiable economic impact. *Id.* at 889. Upon de novo review, we find that the Petitioner demonstrated substantial merit of his endeavor. The Fact Sheet from the Department of State on appeal, along with other news articles and statistics on record about the economic, educational, and cultural advantages to the United States sufficiently demonstrate important contribution of international students studying in the United States. Thus, we withdraw the portion of the Director's decision in finding that the proposed endeavor did not meet the substantial merit element under the first prong of *Dhanasar*.

However, the evidence does not establish that the Petitioner's endeavor meets the national importance element under the first prong of *Dhanasar*. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. In *Dhanasar*, 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. Here, the Petitioner also has not shown that his proposed endeavor extends beyond his prospective clients who are narrowly tailored to Nigerian international students. The Petitioner has not offered sufficient evidence linking his educational consulting company to having a broader reach that rises to national importance.

On appeal, the Petitioner states that "Nigeria sends more students to American colleges and universities than any other country in Africa" and provides an article explaining how Nigerian students are finding higher education outside the country and a fact sheet on strategic partnership between the United States and Nigeria. The Petitioner previously submitted a business plan that contains website links to articles and reports on how Nigerian immigrants are highly educated and how the Nigerian culture values education. While these reports and articles bring awareness to possible trends and situational aspects facing Nigerians, they do not support that the educational consulting company's goal of bringing 100 Nigerian international students to the United States has broad implications to merit national importance.

Since the Petitioner did not meet the first prong of *Dhanasar*, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs. *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 find that he has not established eligibility for 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.