



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

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

In Re: 26953593

Date: MAY 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a real estate developer, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts or business. *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. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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 the 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

To qualify for a national interest waiver, a petitioner must first show eligibility 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 EB-2 eligibility, 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 USCIS may, as matter of discretion,¹ 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

The Petitioner claims eligibility for both types of EB-2 classification, as a member of the professions with an advanced degree and as an individual of exceptional ability. The Director's decision focuses entirely on the issue of the national interest waiver, and includes no determination as to whether the Petitioner qualifies for EB-2 classification. It is not readily apparent that the Petitioner has met the requirements for either classification,² but we will not make a full initial determination on the Petitioner's EB-2 eligibility because the national interest waiver issue, by itself, is sufficient to determine the outcome of the appeal.

The Petitioner is an entrepreneur who has worked for various companies in Brazil. He claims to have co-founded a motorcycle dealership in [] 2006, when he was 17 years old. Since 2010, the Petitioner has held management or board positions with companies engaged in real estate and electronics. He earned a bachelor of law degree in 2012. The Petitioner entered the United States in March 2021 as a B-2 nonimmigrant visitor, and he filed the present petition in August 2021.

The Petitioner's proposed endeavor is to serve as the general manager of a real estate development company in Florida, which he established in [] 2021. A business plan in the record indicates that the new company "will construct houses, primarily in the [] areas," and "will also invest in rental properties." Following a request for evidence (RFE), the Petitioner submitted a revised version of that plan.

The first prong of the *Dhanasar* national interest test, 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. *Matter of Dhanasar*, 26 I&N Dec. at 889. Below, we will focus on the issue of national importance.

The business plan indicates that the Petitioner's proposed endeavor will have "National-level Impact" "by generating direct and indirect jobs, purchasing product/services provided by suppliers, paying taxes, and transferring [the Petitioner's] knowledge to individuals in the U.S.," while also contributing to housing in Florida.

An 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. *Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner's business plan projects "a total of six employees" after five years. The Petitioner did not establish that this amount of employment, and the resulting tax revenue, is substantial enough to have national importance. The

² Those requirements can be found at 8 C.F.R. § 204.5(k)(3).

initial business plan indicated that “national job multipliers published by the Economy Policy Institute” (EPI) predict that the Petitioner’s creation of six direct jobs would produce about 53 indirect jobs. The revised business plan also cited Regional Input-Output Modeling System (RIMS II) multipliers for a real estate business in Florida project “84 jobs in Year 5.” The Petitioner did not address or explain the significant discrepancy between the EPI and RIMS II figures, or show that these figures represent substantial job creation. The Petitioner himself would not be creating these jobs.

In response to the RFE, the Petitioner stated that his work will benefit the United States in four ways: by building low-cost housing to reduce homelessness; by catering to first-time homebuyers; by serving as a consultant; and by purchasing and reselling abandoned properties. The Petitioner provided statistics about some of these issues but did not show that his proposed endeavor would have a significant impact on any of them.

The Petitioner stated that his “specific services . . . deeply differ from the ones generally provided by ordinary Entrepreneurs.” The Petitioner did not explain how his work, and the benefits arising from that work, distinguish him from other real estate developers, or how claimed differences between himself and others give his work national importance.

The Petitioner submitted an “analysis and advisory evaluation” from a university faculty member, who provided general information about the real estate industry (sometimes in language very similar to the Petitioner’s business plan), described the Petitioner’s background, and concluded that the Petitioner is eligible for the national interest waiver. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony, but USCIS is ultimately responsible for making the final determination regarding an individual’s eligibility for the benefit sought. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988).

The Petitioner stated that his “work has palpable broader implications, as its results are widely disseminated to other professionals in the business and construction markets.” The Petitioner does not elaborate as to how his work is disseminated. His revised business plan indicates he plans to outperform, rather than influence, rival companies, because his company’s “product quality, superior customer service, and competitive prices, combined with [the Petitioner’s] expertise and managerial skills, will elevate the Company above other industry operators.”³

The Petitioner cited statistics about a shortage of construction workers, but the Petitioner did not explain how his proposed endeavor would increase the number of such workers. The Petitioner’s business plan does not project that his company will directly employ any construction workers, and he did not explain how his proposed endeavor would cause more people to enter that occupation.

The Director denied the petition, acknowledging the overall importance of real estate development and housing, but concluding that “the petitioner has not shown his proposed endeavor . . . stands to sufficiently extend beyond an organization and its clients to impact the industry or field more broadly.”

³ This stated intent to “elevate the [Petitioner’s] Company above other industry operators” appears to contradict the Petitioner’s earlier statement that he “is not competing with other U.S. Entrepreneurs.”

On appeal, the Petitioner restates the proposed endeavor and maintains that it meets all the *Dhanasar* prongs. The substantive arguments in the appellate brief repeat the Petitioner's response to the RFE.⁴

The Petitioner's involvement in an industry with *collective* national importance does not demonstrate that his proposed endeavor, specifically, has or will have national importance. The Petitioner does not sufficiently distinguish his intended business from those of others in the field. The Petitioner has not established that the projected economic benefits from his proposed endeavor reach the required level of national importance.

In light of the above conclusions, the Petitioner has not met his burden of proof to show that he satisfies the first prong of the *Dhanasar* national interest test. Detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the other prongs.⁵

III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.

⁴ Much of the language in the brief has been copied directly from the RFE response. For example, the brief refers to "the newly enclosed Business Plan" and "the Petitioner's Business Plan enclosed herein." There is no business plan enclosed with the appeal, but there was a revised business plan included in the Petitioner's response to the RFE. Also, the Petitioner's RFE response statement included a paragraph about public housing, printed in gray ink instead of black. That paragraph is also in gray in the appellate brief. The brief also includes several superscript numerals which, in the RFE response, corresponded to footnoted references that do not appear in the appellate brief.

⁵ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).