



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

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

In Re: 26926483

Date: MAY 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an environmental compliance inspector, 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. *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 Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial

merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner summarized his academic and prior employment experience, and he stated that he “realized that my academic background and professional experience could be of interest to the United States of America, according to the requirements by USCIS.” However, the Petitioner did not initially describe what his proposed, prospective endeavor would entail.

The Director sent the Petitioner a request for evidence (RFE) to inform the Petitioner, in relevant part, that the documents he sent in support of his petition “describe [his] experience rather than state what [his] proposed endeavor is” and that “letters of recommendation provided appear to indicate that [his] proposed endeavor is a job-hunt.” Accordingly, the Director requested evidence of what the Petitioner's proposed endeavor is, and further evidence that he satisfies the *Dhanasar* criteria.

In response to the Director's RFE, the Petitioner submitted, in relevant part, a business plan dated August 2022, which indicates that the proposed endeavor is a plan “to establish and develop a new U.S.-based [c]ompany that will primarily specialize in environmental consulting, environmental inspections and waste disposal advisory services . . . based in [redacted] Florida.” The majority of the business plan reiterates the Petitioner's academic and prior employment experience, and it provides generalized information about the environmental consulting industry. However, the business plan states that the Petitioner will “provide precise advice and help his clients identify and implement effective waste storage, disposal, recovery, collection and sanitary landfill treatment and management methodologies and practices.” The business plan further states that the Petitioner “will prepare and provide related reviews, updates and reports on conducted environmental inspections and investigations in reference to aforementioned practices and landfills to the American institutions and companies interested in hiring [his company's] professional services.” The business plan asserts that the Petitioner will work as the company's chief executive officer and that he intends to hire a total of 11 other workers within the company's first five years of operations, including environmental management consultants, environmental engineers, and environmental planning specialists. The business plan anticipates \$460,000 in revenue with \$31,745 in net profit in the first year, increasing to \$1,413,400 in revenue with \$146,989 in net profit in the fifth year.

The Director acknowledged that the record contains the Petitioner's work history, letters of recommendation, and the business plan; however, the Director concluded that the record "is insufficient to establish that his proposed endeavor would have national importance or sufficiently extend beyond his employer and the corporate clients his work will serve." The Director also acknowledged the business plan's anticipation of 12 total employees, including the Petitioner, and an expected revenue of \$1,413,400 in revenue by the company's fifth year of operation; however, the Director noted that the record "did not detail the potential market or client interests in the proposed consulting services" to substantiate the business plan's growth expectations. Ultimately, the Director concluded that the record "does not demonstrate that the proposed endeavor offers benefits which extend beyond potential clients to impact [the Petitioner's] field" and thus did not establish that the proposed endeavor will have national importance, as required by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889-90. The Director further concluded that the record did not establish the proposed endeavor has substantial merit, also required by the first *Dhanasar* prong, and that it did not satisfy the second and third *Dhanasar* prongs. *See id.* at 888-91.

On appeal, the Petitioner submits a three-page letter that reiterates his academic and prior employment experience, and it references an opinion letter in the record from an adjunct professor of mathematics at the [REDACTED] College of New York. The Petitioner also provides an article with general information about waste management.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that although the Petitioner's academic and prior employment experience is material to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—it is immaterial to the first *Dhanasar* prong—whether the specific proposed endeavor has both substantial merit and national importance. *See id.* at 888-91. Therefore, we need not address the Petitioner's academic and prior employment experience further with regard to the Director's conclusion that the record does not establish the proposed endeavor has national importance.

Relatedly, the Petitioner's reliance on the referenced opinion letter on appeal is misplaced. The opinion letter, dated September 28, 2020, also reiterates the Petitioner's academic and prior employment experience, which as discussed above is material to the second *Dhanasar* prong but not to the first prong; however, the extent of the letter's acknowledgement of the proposed endeavor is a generalized assertion that the Petitioner will be "providing his services in the environmental engineering field." The opinion letter does not address the Petitioner's proposal to establish and develop a new company that will primarily specialize in environmental consulting, environmental inspections and waste disposal advisory services, as first described in the record in the Petitioner's business plan dated August 2022, nor does the record reconcile how the adjunct professor could have opined in 2020 on an endeavor the Petitioner had yet to propose.

The Petitioner's reliance on appeal on the submitted article is misplaced for similar reasons to those already address. As noted above, the article, titled "The Human and Financial Cost of Pollution," published by the Columbia Climate School, and dated October 23, 2017, provides generalized information about waste management. However, the article does not address either the Petitioner or his specific, proposed endeavor to establish an environmental consulting company first described in the 2022 business plan, nor does the record reconcile how the author of the 2017 article could have addressed the Petitioner's specific, proposed endeavor at that time. In summation, neither the opinion letter nor the article referenced on appeal establish how the proposed endeavor may have national importance.

Although the Petitioner does not address how the Director may have erred in concluding that the business plan in the record does not establish the proposed endeavor has national importance, we note that it cannot establish eligibility and, even if it could, it raises questions regarding its veracity.

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

As noted above, the business plan is dated August 2022, after the October 2020 petition filing date. Because the Petitioner did not initially indicate that his proposed endeavor would entail founding an environmental consulting company, the business plan dated August 2022 for the founding of such a company presents a new set of facts that the record does not establish existed at the time of filing. Moreover, the environmental consulting company that the business plan proposed to found is material to the first *Dhanasar* prong because it addresses whether the proposed endeavor may have broader implications, such as its potential to employ U.S. workers. *See Dhanasar*, 26 I&N Dec. at 889-90. Because the 2022 business plan presents a new set of material facts that did not exist at the time of filing, it may not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

Furthermore, even if the Petitioner's 2022 business plan to found an environmental consulting company could establish eligibility, which it cannot, it raises questions regarding its veracity. The only address in the business plan for the Petitioner's consulting company is the private residential address the Petitioner provided in response to the Director's RFE and again on appeal. The record does not reconcile how the Petitioner would operate an environmental consulting company with 11 other employees working in his private residence. The implausibility of the Petitioner operating the proposed company with 11 employees working in his private residence casts doubt on the veracity of the business plan specifically, and on the veracity of the proposed endeavor in general. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (providing that doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition).

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We

reserve our opinion regarding whether the record establishes that the proposed endeavor has substantial merit, also required by the first *Dhanasar* prong, and whether the record satisfies the second or third *Dhanasar* prong. 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 conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.