



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

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

In Re: 26958386

Date: MAY 25, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a lawyer specializing in international taxation, seeks employment-based second preference (EB-2) immigrant 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.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner merits, as a matter of discretion, a national interest waiver of the EB-2 classification's job offer requirement. 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 as an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is defined, in relevant part, as any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. *See* 8 C.F.R. § 204.5(k)(2). Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.<sup>1</sup> 8 C.F.R. § 204.5(k)(3).

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<sup>1</sup> Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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>2</sup>, grant a national interest waiver if the petitioner demonstrates that:

- 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 Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree under 203(b)(2)(A) of the Act and the record supports this conclusion.<sup>3</sup> The Petitioner submitted official academic records demonstrating that he completed a bachelor’s degree in law, a post-graduate specialization in tax law, and a master of laws (LL.M) in Brazil. He provided evidence that he continued his legal education in the United States, where he has earned two additional LL.M. degrees and is enrolled in a doctor of juridical sciences (S.J.D.) program in taxation. The record therefore demonstrates that the Petitioner holds an advanced degree as defined at 8 C.F.R. § 204.5(k)(2) and that his proposed profession as a lawyer requires an “advanced degree” or its equivalent. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, the sole issue on appeal is whether the Petitioner meets the requirements of the three prongs of the *Dhanasar* analytical framework and otherwise merits a national interest waiver as a matter of discretion. In denying the petition, the Director addressed all three prongs of the *Dhanasar* analytical framework and concluded that the Petitioner did not demonstrate that he meets any of them. On appeal, the Petitioner asserts that he established that a waiver of the job offer requirement would be in the national interest and contends that the Director did not objectively evaluate all the submitted evidence under the preponderance of the evidence standard.

For the reasons provided below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

### A. Proposed Endeavor

At the time of filing, the Petitioner submitted a “professional plan and statement” proposing “to work with law firms, businesses or corporations to provide expert advice as a lawyer,” noting that he would focus on clients requiring advice on the legal and business environment in Brazil and Latin America. In

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<sup>2</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).

<sup>3</sup> The Director did not address the Petitioner’s eligibility for the requested EB-2 classification in the notice of decision. However, the Director concluded in a request for evidence (RFE) issued on March 21, 2022, that the Petitioner had met his burden to demonstrate that he “qualifies as a member of the professions holding an advanced degree.”

response to an RFE, the Petitioner submitted a “definitive statement” indicating that he intends to serve as the managing partner and head attorney for a new law firm to be established as a Florida professional limited liability company. The Petitioner stated that his firm “will provide international tax and legal consulting for U.S. inbound corporations” as well as “international tax and legal education and training.” He further explained:

My company will perform as an international tax and legal consulting firm to structure Brazilian and other foreign investments into the US, and American investments into Brazil and globally, in a tax efficient manner, taking into account the upcoming new global tax landscape to the [Organization for Economic Cooperation and Development (OECD)] pillars proposals. The services will consist of tax planning of business structures and strategies to both foreign inbound transactions into US and American outbound transactions out of US. This will connect Latin American potential investing institutions and foster new economic ties.

The Petitioner submitted a business plan that includes industry and market analyses, business strategies, financial forecasts and projections, and a description of the firm’s proposed service offerings and personnel. With respect to future staffing, the business plan projects that the Petitioner’s new firm would hire 49 employees in the first five years of operations, create 245 indirect jobs, pay over \$869,000 in taxes, and achieve total revenues of \$1.334 million in its first year and \$4.327 million by its fifth year. In a section titled “Importance to the U.S.,” the business plan states that the firm’s contributions will include continuous and permanent generation of wealth” which will result in “the permanent injection of resources into the economy.” Other prospective benefits mentioned in the business plan include: “strengthening of Law Firms Industry, an important industry for the American economy”; “improving the population’s quality of life”; and improving the financial results of client companies by attracting foreign investment.

## B. Substantial Merit and National Importance

The first prong of the *Dhanasar* framework, 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. *Dhanasar*, 26 I&N Dec. at 889.

The record includes media articles, government publications, and industry reports on the topics of the legal profession, the legal services market and industry in the United States, and the demand for skilled professionals in this field. A 2019 IBISWorld Industry Report regarding “Law Firms in the United States” indicates that “demand for legal services has increased as the economy has continued to grow” and notes that “new laws and regulations, particularly financial regulations, . . . will aid law firm revenue as businesses struggle to comply with new standards.” A 2018 “Legal Industry Outlook” mentions a declining talent pool of young, high-potential lawyers among traditional law firms and a growing number of partner-level attorneys nearing retirement, while one the submitted media articles cites the “inability to recruit enough qualified professionals” as a “barrier to growth across all industries” including “the legal sector.”

In addition, the Petitioner provided articles and reports discussing the role of entrepreneurship in job creation and economic development in the domestic and global economy and the value of immigrants and immigrant entrepreneurs as drivers of U.S. new business growth. The record also contains information about U.S.-Brazil economic and trade relations, the financial- and tax-related complexities and risks of doing business in Brazil and Latin America, and the economic benefits of international trade and foreign direct investment in the United States. This evidence supports the Petitioner's claim that his proposed work as a business owner and managing partner in the international tax and legal consulting services sector has substantial merit.

In 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 Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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.*

We also stated that "[a]n 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." *Id.* at 890. On appeal, the Petitioner asserts that his proposed endeavor will have a substantial economic effect on underserved and underutilized regional economies, noting that his firm's initial and future locations would be in areas the U.S. Small Business Administration has designated as "HUBZones."<sup>4</sup>

The Petitioner states that his initial business location in [REDACTED] Florida (and planned future locations in [REDACTED]) would be in designated HUBZones. Regarding the business' proposed location, the Petitioner indicates that a HUBZone is a historically underused business zone located in either a qualified census tract, a county below certain income and unemployment standards, or lands within Indian reservations, but does not specify in which of these his business would be located or that he intends for his business to participate in the SBA's HUBZone program. Further, a map included in the Petitioner's business plan indicates that only portions of [REDACTED] lie within a designated HUBZone. As he has not provided a specific physical location for his proposed company or provided any evidence of his intention to purchase or lease office space at a particular location, he has not shown that his firm would open locations in one or more economically depressed areas.

In addition, even if the business were to be physically located within an economically depressed area, the direct employment, indirect job creation, and revenue projections included in the Petitioner's business plan are not supported by details showing their basis or an explanation of how those projections will be realized. Finally, while the business plan projects the firm's employment of up to 50 workers at three locations within five years, the Petitioner has not established that this addition to the workforce in any of the three claimed HUBZone regions would be of sufficient significance to rise to the level of national importance. For these reasons, the Petitioner has not shown his endeavor has significant potential to employ U.S. workers or that the specific proposed endeavor would offer a region

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<sup>4</sup> Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized business zones, with a goal of annually awarding at least 3% of federal contract dollars to HUBZone-certified companies annually. *See* "HUBZone Program," <https://www.sba.gov/federal-contracting/contracting-assistanceprograms/hubzone-program>.

or its population a substantial economic benefit through employment levels, business activity, trade, or related tax revenue.

The Petitioner also submitted industry reports relating to the U.S. law firm and legal services markets which mention an increasing demand for experienced young legal professionals and a possible upcoming labor shortage as more attorneys reach retirement age. However, he has not shown that the areas where he proposed to open offices are underserved with respect to legal services. In fact, the submitted IBISWorld report indicate that the states of Florida, Texas and New York are home to 25% of all law firms in the United States. While he indicates that he intends to hire 10 attorneys over five years and additional professionals for his firms' legal services team, the record does not establish that his endeavor has significant potential to impact any upcoming labor shortages in the field or that his firm's projected \$4.3 million in revenue has the potential to have a significant economic or other impact on this \$331 billion industry.

The Petitioner further maintains that his proposed endeavor has "national and global implications within the field," noting that he will boost the U.S. company and the amount of capital in the U.S. market by assisting clients with key investments, facilitating cross-border transactions through foreign direct investment, and assisting U.S. companies to seize market opportunities and investments abroad. The Petitioner broadly maintains that he has the experience and ability to "generate confidence in the U.S. market" and to help "develop the country."

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to provide valuable legal and tax-related services for corporate and individual clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. He places particular emphasis on foreign direct investment as a focus of U.S. government initiatives due to its essential role in ensuring U.S. economic growth and prosperity. However, he has not shown how his new small- to mid-sized law firm would have a demonstrable impact on foreign direct investment in the U.S. economy, which according to a submitted publication from the U.S. Department of Commerce's SelectUSA program, amounted to \$253.6 billion in 2018. While the Petitioner contends that his proposed endeavor will create cross-border financial initiatives between the U.S., Brazil and Latin America, he has not shown, for example, that the prospective impact of the legal and taxation services performed by his firm would represent a significant share of the legal or financial services market or offer projections on the amount of foreign direct investment likely to be generated.

The burden is on the Petitioner to establish that the economic effects of his proposed endeavor are "substantial." He did not provide specific plans, projections of indirect economic benefits, or other sufficient evidence to explain how his specific company activities will have broader implications in the field that rise to the level of national importance or that the company's activities would impact the field beyond the company and its clients. As such, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*.

We have also considered evidence related to the Petitioner's proposed teaching and research activities in his field. The Petitioner's business plan indicates his firm will offer education in international law

and taxation through training, workshops, and seminars. He submitted letters from several Brazilian attorneys who indicate they would specifically invest in the Petitioner's educational endeavors. In *Dhanasar* we determined that 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, we find the record does not show that the Petitioner's proposed teaching activities would sufficiently extend beyond his clientele to impact the legal field or the taxation and financial services industry more broadly at a level commensurate with national importance.

With respect to his research activities, the Petitioner submitted a letter from a professor who serves as faculty supervisor for his S.J.D. degree, which has a projected completion date of 2025. The professor notes that the Petitioner is researching "a novel and relevant topic of international tax law" and states he expects his final dissertation to produce "an impactful discussion in the field of international tax law" that will "foster debate and advance discussion of international tax law and policy" and "provide practical tax strategies for U.S. taxpayers." However, there is insufficient support for a determination that the Petitioner's final dissertation is likely to be widely disseminated, to result in a significant advancement in his field of study, or to establish that the larger field or industry has shown an interest in his research activities at a level that rises to national importance.

In his personal statements and appellate brief, the Petitioner has placed considerable emphasis on his advanced academic qualifications in international law and taxation and the fact that he is well-versed in both Brazilian and U.S. law and business environments. The record contains ample supporting documentation of his educational and employment experience including letters from his colleagues and current and former professors. While important, the Petitioner's expertise acquired through his academic and professional career relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong. A determination regarding the claimed national importance of a specific proposed endeavor cannot be inferred based on the Petitioner's past achievements, just as it cannot be inferred based on general claims about the importance of a given field or industry.

We also acknowledge that the Petitioner provided an expert opinion letter from a professor at [REDACTED] University School of Law. In addressing the first prong of the *Dhanasar* framework, the author describes Brazil's legal system, tax system and trade relations and explains the current market challenges for foreign companies doing business in Brazil. She states that U.S. companies doing business or planning to do business in Brazil "would benefit from the expertise and skills" of the Petitioner as he is "a fully qualified U.S. and Brazilian Lawyer and Tax Attorney, with an extensive knowledge of the legal and fiscal landscape in Brazil and the United States." The professor concludes that the Petitioner's work would be "in an area of substantial merit and national importance." However, she does not address his business plan, the specific proposed endeavor and its prospective substantial economic impact nor does she address the implications of the proposed endeavor on the larger field of legal and taxation consulting services. Rather, most of the letter's discussion of the first prong of the *Dhanasar* analysis simply provides background information about Brazil's business environment, tax framework and legal system.

We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of*

*Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

For the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

### III. CONCLUSION

The Petitioner has not established that he can satisfy the first prong of the *Dhanasar* analytical framework applicable to national interest waiver petitions. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any appellate arguments regarding whether the Petitioner has met the second and third prongs of the *Dhanasar* analytical framework and merits a national interest waiver as a matter of discretion. 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).

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

**ORDER:** The appeal is dismissed.