



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

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

In Re: 26925887

Date: MAY 25, 2023

Appeal of Texas Service Center Decision

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

The Petitioner initially indicated that he seeks employment as an engineer, but later stated that he intends to provide sales operation consulting. The Petitioner 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 issue in dispute on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner entered the United States as an F-1 nonimmigrant student to study at the University of [REDACTED] where he earned a bachelor's degree in chemical engineering in 2016 and a master's degree in engineering management in 2017. He has remained in the United States since completing his degrees. He worked for a manufacturing company in [REDACTED] Florida, between January 2018 and May 2020, first as a planning engineer, then as a sales engineer, and finally as a product/project manager.

When the Petitioner filed the petition in September 2020, he was unemployed, and did not provide any details about his proposed endeavor except to state, on both the Form I-140 petition and the accompanying Form ETA 750 part B, Statement of Qualifications of Alien, that he intended to work as an "engineer." On both forms, instead of providing more details, he wrote "please see attached," but the record does not show any accompanying attachment with more information. At the time of filing, the Petitioner did not elaborate further about his proposed endeavor or explain how that endeavor met the *Dhanasar* requirements for a national interest waiver.

In May 2022, the Director issued a request for evidence (RFE), asking the Petitioner to describe his proposed endeavor. In response, the Petitioner stated he seeks "to provide sales operation consulting services to companies operating in the solar power industry." A petitioner must meet all eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). When he filed the petition in 2020, the Petitioner did not claim any experience or expertise in sales operation consulting services for the solar power industry, and he did not indicate that such work played any part in his proposed endeavor. As noted above, the Petitioner initially stated that he seeks employment as an "engineer," and the Petitioner has not claimed that sales operation consultants are engineers.²

A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). Here, in responding to the RFE, the Petitioner did not expand upon the proposed endeavor as initially described. Rather, he materially changed his proposed endeavor from engineering to sales operation consulting. He did not claim or establish that sales operations consulting qualifies as a type of engineering. Because the Petitioner's proposed endeavor at the time of filing did not involve the solar power industry or sales operation consulting services, USCIS cannot properly approve the petition based on this wholly new proposed endeavor.

² A passage in the appellate brief indicates that the Petitioner "seeks employment in the field of Software Engineering," a claim that appears nowhere else in the record.

Even so, the Petitioner has not shown that the newly claimed proposed endeavor meets the requirements in the *Dhanasar* framework.

The first prong, 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.

In denying the petition, the Director concluded that the Petitioner had satisfied the "national importance" element of the first *Dhanasar* prong. The Director did not elaborate, and the record does not appear to support this determination. The wider importance of clean energy does not necessarily impart national importance to the Petitioner's specific proposed endeavor as a sales consultant in that industry. We need not explore this issue further, however, because the stated grounds for denial support dismissal of the appeal without needing to address this favorable determination.

The second *Dhanasar* prong shifts the focus from the proposed endeavor to the individual. To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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. *Matter of Dhanasar*, 26 I&N Dec. at 890.

In concluding that the Petitioner had not established that he is well positioned to advance the proposed endeavor, the Director stated:

[The Petitioner] submitted a copy of the beneficiary's degree to establish that the beneficiary meets this requirement. However, this is insufficient because while obtaining a degree in the area of the proposed endeavor is advantageous, it does not establish on its own merits that the beneficiary is well positioned to advance the proposed endeavor. The record does not establish that the beneficiary has had success in prior related endeavors, that they have had significant roles in other projects, or that they are a member of organizations or communities where their ideas may help advance the endeavor.

We agree with the Director's conclusions, as explained below.

In the case of the petitioner in *Dhanasar*, we cited several the individual's "education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities." *Id.* at 892-93. The Petitioner in the present case has not established such favorable factors. At the time he filed the petition, the Petitioner claimed no experience working in sales for solar power companies, either directly or as a consultant. The company that employed the Petitioner in [REDACTED] from 2018 to 2020 manufactures "Aerospace Products," "Orthopedic Surgical Instruments" and "Automotive Products." When the Petitioner responded to the 2022 RFE, he submitted a letter from a solar energy company in [REDACTED] Florida, indicating that the Petitioner had begun working there as a sales representative in March 2021, about

five months after he filed the petition. As explained above, experience from 2021-2022 cannot show that the Petitioner was eligible at the time of filing in 2020.

Also, the experience letter from the [] company does not include a specific description of the Petitioner's duties as required by the regulation at 8 C.F.R. § 204.5(g)(1). The letter indicates that the Petitioner "has been employed as a Sales Representative/Regional Manager . . . since March 1st, 2021," and provides no other details.

In a "Personal Plan" submitted in response to the RFE, the Petitioner also claimed to have been "engaged as a solar specialist" at another company, but he provided no dates for that newly claimed employment and no supporting evidence as required by 8 C.F.R. § 204.5(g)(1). The Petitioner did not list this employment on his ETA Form 750 Part B or on the résumé submitted with the petition, and there is no evidence or indication that this employment took place before he filed the petition.

Furthermore, while the Petitioner gained some sales experience with solar panels after the filing date, he did so on the staff of an established company. The Petitioner's proposed endeavor involves starting his own consulting business. The record does not show that the Petitioner has any experience acting as an independent consultant or operating his own business in this way.

On appeal, the Petitioner states that he "boasts a long list of distinguished professional achievements, having actively participated in a variety of fields and in different positions for roughly seven years." The Petitioner describes his 2018-2020 employment with the manufacturing company in [] and also discusses employment from when he was a student, specifically "as a graduate assistant at the University of [] where he developed tutoring techniques for international undergraduate students in STEM courses" in 2016-17, and a summer internship in "process engineering" in Kazakhstan in 2015, about which the Petitioner has provided few details and no corroborating evidence. The Petitioner does not explain how this experience has helped to position him well for work as a sales operations consultant.

In light of the above conclusions, the Petitioner has not met his burden of proof to show that he satisfies the remaining prongs of the *Dhanasar* national interest test. Detailed discussion of those remaining prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the other prongs.³

III. CONCLUSION

The Petitioner has not established that he is well positioned to advance the proposed endeavor, and that proposed endeavor is entirely different from the occupation that formed the original basis for the petition. 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.

³ 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).