



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

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

In Re: 26928984

Date: MAY 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a finance consultant, seeks employment-based second preference (EB-2) 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 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 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.

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, 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 discretion¹, 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

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).

- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

Because the Director did not address the underlying issue of whether the Petitioner meets the eligibility criteria of the EB-2 classification, we will reserve that issue, as the identified reasons for dismissal are dispositive of the Petitioner's appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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). Therefore, the issue to be determined 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.² For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner's initial supporting evidence included a professional plan where the Petitioner stated that his proposed endeavor is to continue his career as a financial consultant for U.S. companies in "various sectors." The Petitioner stated that he would own a company through which he would "provide financial training and education to improve financial literacy." He further stated his proposed endeavor could potentially impact the United States through U.S. job creation and tax revenue and by promoting job creation in rural and economically underserved communities, encouraging business development, and providing business opportunities to prospective clients. The Petitioner claimed that his "concrete contributions . . . to an assortment of U.S. companies and individuals" would benefit the U.S. economy. He also provided industry reports and articles discussing the financial services industry in the United States, as well as letters of recommendation from former employers and peers who discussed the Petitioner's skills and knowledge of the financial services industry. We note, however, that the Petitioner's skills and knowledge relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

In addition, the Petitioner submitted an "Expert Opinion Letter" from an associate professor of marketing at the [redacted] University. The letter provides background information about the Brazilian economy and generally explains why the professional services of financial consultants are beneficial. The letter states that the Petitioner's endeavor is of national importance because it would have a "macroeconomic impact for the United States . . . in terms of facilitating ease of business development, expansion and investment opportunities at home and abroad, whilst minimizing financial losses for U.S. companies. . . ." We find, however, that the letter does not adequately explain, nor does the record include adequate corroborating evidence, to show that the Petitioner's proposed endeavor to provide financial consulting services offers broader implications to the field of finance, thereby rising to the level of national importance. Further, USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted

² The Director initially determined that "upon careful review" of the record, it was determined the Petitioner "submitted a detailed description of the proposed endeavor and documentary evidence that demonstrates that the proposed endeavor has substantial merit. . . ." The Director later stated, "Therefore, the [P]etitioner has not established that the proposed endeavor is of substantial merit." Upon our de novo review, we agree with the initial statement that the proposed endeavor has substantial merit.

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).

The Director issued a request for evidence (RFE) advising the Petitioner of the need for additional evidence addressing the national importance of the proposed endeavor. In response, the Petitioner provided a "Definitive Statement" where he elaborated on his intent to provide financial services through his own financial consulting firm and to function as the firm's chief executive officer (CEO) while hiring "qualified U.S. professionals" to fill the positions of branch manager, investment consultant, lawyer, accountant, marketing consultant, and "other necessary positions."³ He further stated that his endeavor will impact the United States because it will: (1) generate jobs for U.S. workers and improve wages; (2) "boost local economies" and encourage economic development; (3) "fuel small business growth in historically underutilized business zones" and serve "economically underserved communities"; and (4) "spur significant foreign direct investment (FDI) opportunities for the country."

In describing his role as his firm's CEO, the Petitioner did not state that he would provide financial consulting services to clients, as he originally claimed. Rather, the Petitioner stated that his duties would include "formulating policies, managing daily operations, and planning the use of materials and human resources." We note, however, that a petitioner must establish eligibility based on the proposed endeavor at the time the petition was filed. See 8 C.F.R. § 103.2(b)(1). 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). In addition, although the Petitioner provided a business plan offering revenue and hiring projections, that business plan is dated October 2022, thus indicating that it was created approximately two years after this petition was filed. As noted above, the Petitioner must establish eligibility for the requested benefit *at the time of filing* the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts."). That said, consideration of the business plan would not result in a favorable determination.

Specifically, the business plan includes a five-year hiring projection for the Petitioner's consulting firm, starting with nine employees in the first year of operation – including the Petitioner as CEO, the five positions listed above, along with a "bank/investment fund relationship" position, a receptionist, and an administrative assistant – progressing to 31 employees by the fifth year. The business plan also projects over \$14.3 million in total payroll expenses, \$19.3 million in sales revenue, and over \$1.4 million in tax revenue in its fifth year of operation. However, the Petitioner did not adequately explain how these sales forecasts were calculated, nor did it elaborate on the staffing projections or provide evidence supporting a need for the additional employees.

³ Although the Petitioner claimed that he formed a consulting firm called [REDACTED] in the State of Florida, the record contains no evidence of the company's formation.

Furthermore, while the sales and staffing projections indicate that the Petitioner's company has growth potential, the record does not demonstrate that the creation of 31 additional jobs will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework. As noted, the record also does not reliably demonstrate the financial figures to persuasively demonstrate that it would have a substantial economic impact. And while the Petitioner initially claimed that his proposed endeavor will target underutilized areas and economically underserved communities, the business plan does not: (1) identify such areas or communities, (2) explain how the Petitioner plans to target those areas and communities, or (3) elaborate on the endeavor's intended impact on the undetermined areas and communities. In fact, the record does not establish that the impact of the proposed endeavor would go beyond benefitting the clients that engage the Petitioner's company. The record does not sufficiently show that such benefits, either individually or cumulatively, would rise to the level of national importance.

In the denial, the Director also questioned the validity of the Petitioner's business plan, pointing to conflicting information pertaining to ownership of the Petitioner's firm and noting that the endeavor as described in the RFE response was a departure from the information originally provided at the time of filing. Further, the Director found that the plan's revenue forecasts were not derived from empirical data, but rather were based on a projected industry growth rate obtained from IBISWorld Report. The Director also pointed out that the Petitioner has not provided evidence to show that [] where the company is headquartered, is an economically depressed area or that a significant population of workers in that area would be used for the Petitioner's endeavor thus resulting in substantial economic benefit through employment levels or business activity.

On appeal, the Petitioner asserts that the preponderance of the evidence standard must be applied when evaluating the national importance of the proposed endeavor under the *Dhanasar* framework. The Petitioner also reiterates information about his experience in the field of finance, emphasizing his education and employment history and pointing out that both have been "corroborated by concrete and credible evidence to support an issue of national importance." However, as discussed throughout this analysis, in determining national importance, the focus is on the "the specific endeavor that the foreign national proposes to undertake." See *Matter of Dhanasar*, 26 I&N Dec. at 889. While the Petitioner's knowledge, skills, education, and experience are relevant in determining the Petitioner's eligibility, these are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The Petitioner also highlights his ability to provide financial consulting services that will lead corporations to realize "potential opportunities for business development and economic growth," claiming that his endeavor would "enhanc[e] business operations" and contribute to a "streamlined economic landscape." However, these vague claims about the endeavor's "multiple positive effects on the U.S. marketplace" offer no meaningful understanding as to how our nation stands to benefit from the Petitioner's proposed endeavor, nor do they elaborate on the endeavor's precise role in creating these vague benefits.

While the Petitioner's statements reflect his intention to provide valuable financial services to his company's 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. 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. Likewise, the Petitioner in this matter has not shown that his proposed endeavor stands to sufficiently extend beyond his

company and its clientele such that it would impact the financial consulting field, the financial services industry, or the U.S. economy more broadly at a level commensurate with national importance. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose, and we reserve those grounds. Also, as noted above, since the Director did not address the underlying issue of whether the Petitioner meets the eligibility criteria of the EB-2 classification, we will reserve that issue and dismiss the appeal based on the identified reasons discussed above. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976).)

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits 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.