



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

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

In Re: 28952554

Date: JAN. 04, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, 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 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 record did not establish that the Petitioner merited a national interest waiver as a matter of discretion. 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. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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

II. ANALYSIS

The Petitioner proposes to lead and develop his business, as an entrepreneur and CEO. The company would provide financial consulting, loans, and collections services to small and medium-sized businesses. In his decision, the Director determined that the Petitioner is eligible for the EB-2 classification as a member of the professions holding an advanced degree.² The only issue remaining on appeal is whether the Petitioner merits, as a matter of discretion, a national interest waiver of the classification's job offer requirement, and thus of a labor certification. For the reasons discussed below, we conclude that he does not.

A. Substantial Merit and National Importance

The first prong of the *Dhanasar* analytical 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.

Here, the Director concluded, without any analysis, that the Petitioner's proposed endeavor is of substantial merit and national importance. We agree that the evidence regarding the impact of entrepreneurs in the national economy is sufficient to show its substantial merit in the area of business.

Regarding the national importance of the proposed endeavor, the Director noted in his request for evidence (RFE) that the evidence initially submitted did not show that this requirement had been met. In his response to the RFE, the Petitioner referred to his personal statement and resume, the business plan for his company, and several articles and reports. He initially focused on his work experience as an entrepreneur and manager for companies involved in financial services and debt collection. However, as noted above, the first prong of the *Dhanasar* framework focuses on the potential prospective impact of the specific proposed endeavor, whereas a petitioner's experience and record of success in related activities are among the factors considered under the second prong.

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).

² The Director's decision concludes that the Petitioner qualifies as a member of the professions holding an advanced degree based solely upon his bachelor's degree in economics. While this conclusion is based upon an incomplete analysis, the evidence of record establishes that the Petitioner also has the required five years of progressive, post-baccalaureate experience in his specialty, so we agree that he has established his eligibility as a member of the professions holding an advanced degree.

The Petitioner next highlighted the economic impact of his proposed endeavor, relying mainly upon the projections included in his business plan. These include his plan to hire 37 employees within the first five years of the business' operation, as well as generating over \$9 million in sales over those initial five years. An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Id.* at 890. Here, however, the business plan does not adequately support these projections of job and revenue creation. It explains that small- and medium-sized businesses will be served, that it will be located in the [redacted] metropolitan area, use a website and social media for marketing, and provide financial consulting, loans, and collections services. But it lacks sufficient justifications for its projections for the volume of sales of these services or the hiring of employees needed to provide them, relying instead upon broad metrics such as the concentration of business establishments in the state of Florida. As the Petitioner is asserting that his specific proposed endeavor will have significant potential to employ U.S. workers or have other substantial positive economic effects, the source of his projections are key to his argument. Here, the broad regional and industry data provided do not provide an adequate justification for the projections for his specific business.

In addition, the record does not establish that even if the job creation and revenue projections included in the Petitioner's business plan are well-supported and reasonable, those projections show a significant potential to employ U.S. workers or have other substantial positive economic effects. As noted above, potential job creation or other substantial positive economic effects, particularly in an economically depressed area, may be a factor in showing that an endeavor has national importance. In his initial filing, the Petitioner referred to a metric called the Distressed Communities Index (DCI), and asserted that his business' location in [redacted] Florida places it in "one of the most economically distressed communities in the U.S." However, the record does not include evidence to support these claims, nor does it contain evidence about the DCI, its source, and its conclusions. The Petitioner did not supplement the record in this regard when responding to the Director's RFE, instead claiming that the state of Florida is an "SBA Hubzone." But he also did not provide documentary evidence regarding Hubzones, or explain why his business' location in a historically underutilized business area would be of national importance. Further, the Petitioner does not explain how the potential addition of 37 jobs over the first five years of [redacted] operations would be of significance in the area in alleviating any economic distress or addressing commercial underutilization.

The Petitioner also submitted several reports which discuss the economic impact of immigrant entrepreneurs, and stated that those like the Petitioner "are an essential component of the U.S. economic market" and provide millions of jobs for U.S. workers. These included papers and articles from organizations such as New American Economy, Harvard Business School, cnbc.com and Inc.com. While there is no doubt about the national importance of entrepreneurs in general to the national economy, simply claiming membership in a class or occupation is not sufficient to establish national importance, as the focus of the first prong of the Dhanasar analytical framework is "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The papers and articles submitted help to show that the proposed endeavor is generally in an area of substantial merit, but the Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor.

Another element of the Petitioner's claim regarding the national importance of his proposed endeavor focuses on what he called the "business development" aspect of his business, wherein he stated that he will "create value" for small and medium-sized businesses in the U.S. by providing his expert consultations on the optimization of business processes, sales, and marketing. He asserted that this will have national importance by helping these businesses to become more resilient to economic downturns, thus keeping their workers employed. [redacted] clients could potentially enjoy improved economic resiliency resulting from the company's services. But in the same way that teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, here the Petitioner has not demonstrated that his proposed endeavor would have broader implications in the field of business on the U.S. economy beyond the companies on the receiving end of [redacted] services. *Id.* at 893.

For all of the reasons discussed above, we disagree with the Director and conclude that the Petitioner has not established that his proposed endeavor would be of national importance. He therefore has not shown that he meets the first prong of the *Dhanasar* analytical framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are 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. *Id.* at 890.

In her decision, the Director listed some of the evidence submitted, as well as the factors considered in determining whether a petitioner is well positioned to advance their proposed endeavor. While she acknowledged the Petitioner's skills and abilities relating to the proposed endeavor, the Director concluded that the record did not show a record of success or interest in the Petitioner's work sufficient to establish that he qualified under the second prong of the *Dhanasar* analytical framework.

On appeal, the Petitioner initially asserts that the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." However, he does not identify any instances in which the Director went beyond the regulations governing either the underlying EB-2 classification or the national interest waiver. Instead, in further developing his argument, the Petitioner asserts that the Director overlooked evidence of his decades of experience in the banking and factoring industries, as well as other evidence which he asserts addresses the other factors listed in the Director's decision.

Regarding the Petitioner's education and experience relating to his proposed endeavor, the record does include evidence relating to this factor. In addition to his degree in economics, corporate documents show that he founded two companies in Brazil, and letters from some of his clients and business partners attest that those companies provided services in the areas of factoring and loans. While this evidence does not establish a record of success, as it is insufficient to show that these companies thrived, experienced growth, and obtained a positive reputation within their industry, it does show his previous relevant experience as an entrepreneur and businessperson in the same field as his proposed endeavor.

The Petitioner also highlights what he interprets as negative conclusions in the Director's decision regarding some of the other second prong factors. While we note that the Director did not directly analyze these factors in her decision, we will address the Petitioner's assertions below.

As evidence of his plans relating to his proposed endeavor, the Petitioner states that the business plan for [REDACTED] provides details including projections of employment and revenue, demonstrating his "thoughtful approach and strategic vision for the future." However, as we noted above, those projections are not sufficiently supported, and the plan mainly focuses on the Petitioner's qualifications, the industry in which it will operate, and broad business concepts applicable to all companies. Issues such as funding and customer base and acquisition are only briefly touched upon, and the Petitioner's assertion that he will provide the initial funding from his own assets is not supported by documentary evidence of those assets.

Related to the above, the Petitioner also asserts that he has shown that he is making progress towards achieving his proposed endeavor, and that it has the interest of potential customers. We acknowledge the evidence showing that [REDACTED] has been established as a legal entity, but the letters highlighted in his RFE response are from clients of his Brazilian businesses and do not show progress or an interest in his proposed business in the U.S. As these are separate markets subject to very different business conditions, the Petitioner's assertion that they show his ability to garner interest and support is not persuasive.

We acknowledge that petitioners for a national interest waiver are not required to establish that their proposed endeavors are more likely than not to succeed. *Id.* at 890. But they still must show that they are well positioned to advance those endeavors. After considering the totality of the evidence and the factors analyzed above, we agree with the Director and conclude that the Petitioner has not established that he is well positioned to advance his proposed endeavor.

III. CONCLUSION

The Petitioner has established his eligibility for the EB-2 classification as a member of the professions holding an advanced degree. However, he has not shown that his proposed endeavor is of national importance, or that he is well positioned to advance that endeavor, and therefore he does not merit a national interest waiver of the EB-2 classification's job offer requirement. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the third prong of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

ORDER: The appeal is dismissed.