



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

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

In Re: 33390223

Date: SEP. 06, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a sales operations manager, 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, because the Petitioner did not respond timely to the request for additional evidence (RFE). On motion, the Director withdrew the denial but determined the additional evidence did not establish that eligibility for a waiver of the required job offer, and thus of the labor certification, would be in the national interest.¹ The matter is now before us on appeal pursuant to 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 establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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

¹ In August 2023, the Director issued a denial on the same underlying petition. The Petitioner's motion to reopen and reconsider is pending.

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,² 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.

Id.

II. ANALYSIS

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. Because the record reflects the proposed endeavor falls within one or more of these areas, the Petitioner established the substantial merit aspect. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889.

As the Director correctly concluded, the record does not reflect the proposed endeavor has national importance because it lacks prospective impact. The Petitioner intends to work as a CEO for [REDACTED] [REDACTED] The consulting corporation will target large and small companies that operate in various trade sectors. As CEO the Petitioner “will provide tailored sales consulting support and various other services to help clients increase revenues and implement successful sales strategies such as revenue generation, employment, market expansion, data analytics and technology, customer satisfaction, compliance and ethical practices, supply chain management, competitive advantage and tax revenue.”

On appeal, the Petitioner asserts the Director erred in concluding that Petitioner did not establish the national importance of his endeavor, he also claims that he is well positioned to advance the endeavor and that it would be beneficial to the United States to waive the job offer and labor certification requirements. Explaining that the evidence contains sufficient documentation to establish that it meets the three-prong analysis established in *Dhanasar*, he contends he qualifies for the national interest waiver.

Although the Petitioner maintains that sales manager positions are vitally important for business development and are responsible for “building a solid customer base, nurturing trust, and fostering customer loyalty”, the matter here is not whether sales managers and other aspects of sales within a company are nationally important. Rather, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of working as the CEO for [REDACTED] Here the record lacks specific and detailed information as to how the proposed company, and the Petitioner’s role as CEO of the company, would have a national impact. Likewise, the report by Deloitte and the

² See *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

study by Accenture that the Petitioner contends support the national impact of his endeavor, cover a wide range of topics, such as implementation of best practices, rather than establishing the national importance of his particular professional services or business.

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. *Dhanasar* at 893. Here too, while we agree with the Petitioner that as a sales manager the petitioner could "contribute to small organizations in the US by providing top-notch business consulting services," the record does not show how his proposed endeavor stands to sufficiently extend beyond small businesses to lead to "national or even global implications" in the field of business or sales more broadly at a level commensurate with national importance. *Id.* at 889.

Moreover, the Petitioner stresses his "record of achievements and continuous concrete contributions." He explains that he will act as "a Sales Manager Consultant in my own company" and that his extensive educational and professional background has equipped him with the skills necessary to successfully lead the development of his company. However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

Finally, while he provided a business plan for the proposed company, the Petitioner did not present any supporting evidence corroborating the assertions and figures. Moreover, the Petitioner did not demonstrate how the business plan's claimed revenue, even if credible or plausible, has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although the business plan forecasts sales from \$420K in year 1 to \$1.5MM in year 5, the Petitioner did not establish the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. The Petitioner explains that by "helping companies to implement various sales strategies and become more efficient, as well as assisting them to increase their earnings and reduce the necessary risks, costs will be reduced, creating a surplus of funds." However, the business plan provides insufficient details to explain how the Petitioner will achieve these outcomes. The record does not demonstrate that, beyond the limited benefits provided to its prospective businesses, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

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 the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose, as well as a review of the Petitioner's qualification for the underlying immigrant classification.³

³ 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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude he has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.