



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

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

In Re: 33347126

Date: SEP. 09, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business 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 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 though the Petitioner qualified for classification as a member of the professions holding an advanced degree, he 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 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. 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 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>1</sup> grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

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<sup>1</sup> *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).

- 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 Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined 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 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. *Dhanasar*, 26 I&N Dec. at 889.

According to the Petitioner's business plan submitted with the initial filing, he intends to direct and oversee the operation of a "business consulting agency that will operate from the state of Massachusetts" and will offer "expert business consulting services to small and medium-sized companies in need of a business plan and business model development, strategic consulting and financial business process outsourcing (BPO) services." Under the Petitioner's "expert direction as Executive Business Consultant," the proposed company "will create further employment opportunities and qualify a number of individuals to work in the Management Consulting Industry in the U.S., providing them with the knowledge and skill needed to enhance this sector and thus benefiting the wider U.S. economy." The Petitioner also submitted recommendation letters and documents related to his education and professional experience in support of his eligibility.

The Director determined, in part, that the Petitioner's initial filing did not demonstrate the proposed endeavor's national importance and issued a request for evidence (RFE). In response, the Petitioner submitted additional documentation, to include a personal statement and letters from individuals expressing interest in working with the Petitioner and his company. According to the Petitioner's personal statement, he intends to "perform as a Business Consultant and provide [his] specialized services to impact Financial Services Companies, Consumer Products and Hospitality, Government Organizations, Technology, Media, Telecommunications Companies, Healthcare, and Life Sciences Sectors, and Energy, Resource, and Industrial Companies through innovation in the U.S. Due to [his] extensive professional experience in internal auditing, compliance, risk management, internal controls assessment, and management consulting, [he] will use [his] extensive experience to run" his proposed company. The Petitioner indicated that his "proposed endeavor will certainly produce positive social and economic effects and spur innovation, having a significant impact on the efficiency and profitability of American companies."

In denying the petition, the Director concluded that though the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate the Petitioner's endeavor stands to have a broader impact on the field, rising to the level of national importance. The Director noted the

Petitioner's claim that his proposed endeavor will broadly impact various areas since business administration is the backbone of any given establishment, a business' ability to succeed causes a ripple effect, and the endeavor will not only impact his direct clients and the businesses he works with but rather the social welfare of Americans as a whole. The Director found that the submitted documentation, specifically the excerpts of articles and reports discussing entrepreneurship and consultancy industries, were not sufficient to corroborate his assertions. In addition, the Director determined that the evidence did not establish the Petitioner's endeavor has significant potential to employ U.S. workers or otherwise reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Regarding the Petitioner's claim that his proposed endeavor meets the national importance prong due in part to the occupational shortage in the United States, the Director noted that a shortage in a particular field does not render the proposed endeavor nationally important.

On appeal, the Petitioner claims that the Director made numerous erroneous conclusions of law and fact. He asserts that the RFE response included supporting documentation to show there is specific interest from the U.S. government in the Petitioner's endeavor as demonstrated by governmental efforts to revitalize small businesses and enhance capital access across the nation. The Petitioner contends the record demonstrates his proposed endeavor meets the national importance element of the first prong of *Dhanasar* because his financial management model, which he successfully implemented in Brazil to facilitate sustainable profitability for small businesses, "will fundamentally alter the landscape of small business success rates."

Upon review, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate whether he had demonstrated, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework. In determining national importance, the relevant question is not the importance of the field, 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. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and 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. Although the Petitioner discusses the value and importance of financial management and business consultancy and their impact on the U.S. economy, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession. *Id.* at 889.

The Petitioner provided recommendation letters and documents relating to his education, professional experience, and accomplishments. However, the Petitioner's skills, expertise, 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 he proposes to undertake has national importance under *Dhanasar*'s first prong. The record in its totality does not show through supporting documentation how the Petitioner's specific services stand to sufficiently extend beyond his prospective clients to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Further, the Petitioner did not demonstrate that his company's proposed operations would provide substantial economic benefits to Massachusetts, the region, or the U.S. economy more broadly at a level commensurate with national importance, nor did he demonstrate that his company's activities would substantially impact job creation and economic growth, either regionally or nationally. For example, the Petitioner's business plan projects that his company will have 42 employees by the fifth year of operation. However, the record does not contain sufficient details and supporting evidence to demonstrate how his company will reach the stated economic impact objectives; how the company will pay for potential workers and business expenses; and overall, how his proposed endeavor will substantially impact job creation and economic growth in the region or nation.

While the business plan forecasts total operating expenses to reach \$3.4 million by the fifth year of operation, the record lacks evidence to show adequate investment funds, either from the Petitioner or other entities. The business plan lists "paid-in capital" of \$40,000 and "cash and other current assets" of \$53,000 in the first year of operation without specifying the source of the capital and assets. We also note the record contains three letters from individuals indicating interest in working with the Petitioner in the future. However, the letters do not reflect contractual work or investment commitments with the Petitioner's company. Therefore, the Petitioner has not demonstrated that his company has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make 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 an applicant is otherwise ineligible).

**ORDER:** The appeal is dismissed.