



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

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

In Re: 33564356

Date: SEP. 12, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an agribusiness executive, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner merited a waiver of the job offer and labor certification requirements for EB-2 classification. 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 withdraw the Director's decision, in part, and 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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 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,¹ 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

As an initial matter, though not necessary for our final determination, we must withdraw the Director's determination that the Petitioner is an advanced degree professional. As evidence of his advanced degree, the Petitioner provided a copy of his diploma from [REDACTED] [REDACTED] Brazil showing a *Título de Bacharel em Administracao*. The Petitioner did not provide a copy of his transcript related to this degree but indicated on his resume that he attended the school from 1995-1998.

Information from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE)² states that:

The 3-year *Título de Bacharel/Grau de Bacharel* represents attainment of a level of education comparable to 3 years of university study in the United States. Credit may be awarded on a course-by-course basis. The 4- or 5-year *Título de Bacharel/Grau de Bacharel* represents attainment of a level of education comparable to a bachelor's degree in the United States.

The evaluator indicates that the Petitioner has a Bachelor of Business Administration equivalent based on academic qualifications alone. However, the evaluator appears to have made this determination based on the issuance of a diploma, rather than a combination of examination of the degree and the Petitioner's transcript. Absent the transcript of the Petitioner's undergraduate degree demonstrating four years of study, he has not established that he received a degree equivalent to a U.S. bachelor's degree. *See* 8 C.F.R. § 204.5(k)(3) (requiring the submission of an official academic record).

The Petitioner further provided evidence of his continuing education including a *Latu Sensu* from [REDACTED] and courses in business management at G- V- F-³. In support of his assertion that he has the equivalent of a U.S. master's degree, the Petitioner provided an evaluation of his

¹ *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).

² We consider EDGE to be a reliable source of information about foreign credential equivalencies. *See Confluence Intern., Inc. v. Holder*, Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder*, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013). *See* <https://www.aacrao.org/edge/country/brazil> for information regarding the education system in Brazil and credential equivalencies (last accessed May 25, 2023).

³ We use initials to protect the privacy of individuals and organizations not party to the appeal.

academic credentials. The evaluator concludes that the combination of the Petitioner's bachelor, *latu sensu* diploma, and work experience is "the equivalent of a master's degree in [b]usiness [a]dministration."

EDGE indicates that:

Professional development and specialization programs are considered *latu sensu*/ wide sense graduate level programs and follow independent legislation. Such programs lead toward professional certificates, not graduate degrees. They require 1 to 2 or 3 years of study.

For the above reasons, the Petitioner has not established that he has a "foreign equivalent degree" as required by 8 C.F.R. § 204.5(k)(2).⁴ Because the Petitioner has not provided a copy of his official academic record as defined by the regulation or otherwise provided evidence related to the number of credit hours and courses completed for his bachelor, he has not established and we cannot conclude that he qualifies as an advanced degree professional. In addition, as the Petitioner does not claim (and the record does not establish) that he is an individual of exceptional ability, he has not demonstrated eligibility for the underlying classification. Accordingly, the Petitioner has not established that he qualifies for EB-2 classification.

A. The Proposed Endeavor

The Petitioner proposes to work in the United States as a consultant in the field of agribusiness specializing in seeds and seed technology. He proposes to provide consulting and organizational services to various unnamed clients in the agribusiness industry.

B. Substantial Merit and National Importance

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.

We withdraw the Director's determination that the Petitioner has established the national importance of his proposed endeavor. A review of the record indicates that the Petitioner's proposed endeavor is not sufficiently defined to establish the potential economic or industry impacts. The Petitioner has stated that he intends to operate as a consultant in the agribusiness industry but does not identify a specific client for whom he would work or what effect his work would have on that organization. The

⁴ Compare 8 C.F.R. § 214.2(h)(4)(iii)(D) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a United States baccalaureate or higher degree.") Where combinations of education or experience may equate to baccalaureate degrees, the Act and regulations state so explicitly. See section 214(i)(2)(C) of the Act, 8 U.S.C. § 1184(i)(2)(C) (allowing H-1B workers to have "experience in the specialty equivalent to the completion of such [bachelor's] degree"); see also 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) (stating H-1B workers may have "education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate ... degree"). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

Petitioner, in general terms, relies on his professional experience and history of past accomplishments to argue that he would have a positive effect on the seed industry in the United States without supporting evidence or a clearly defined scope of work within the industry. The Petitioner's expertise and record of success in previous positions are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of his proposed work.

The Petitioner relies on the importance of the seed industry, and more broadly agriculture, rather than on his own potential impact on a specific project or projects within the United States. In determining national importance, however, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the "specific endeavor that the foreign national proposes to undertake." *Id.* at 889. We further indicated that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated 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.

On balance the Petitioner has not established that his proposed endeavor would have a significant likelihood to employ workers or otherwise effect the agribusiness industry in the United States. He states that he would provide a broad range of services to potential customers. His endeavor appears to be a single person consulting business that would not employ additional U.S. workers. Instead, the Petitioner argues that since his work would affect all farmers and growers that it would have a broad effect on the U.S. economy. This determination hinges on an assessment of the broader societal or economic implications of the Petitioner's contributions, requiring he demonstrate broader benefits that extend beyond the confines of a local industry. *See Dhanasar*, 26 I&N Dec. at 893. Therefore, while ripple effects may signify positive developments within a narrow area, they alone may not suffice to establish the requisite level of national importance. *Id.* at 890, 892. Thus, it remains incumbent upon petitioners to present compelling evidence of their capacity to significantly benefit the industry or field as a whole, in accordance with the prevailing legal standards.

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. Similarly, the record here does not establish that the Petitioner's nebulous role as a consultant for an unspecified company or companies would have an appreciable impact on the economy of the United States or the field of agribusiness.

C. 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.

The Petitioner relies upon his experience in the seed industry in Brazil to demonstrate that he is well positioned to act as a consultant for U.S. agribusiness organizations. The Director determined that the Petitioner was not well positioned to advance the proposed endeavor based, in part, on the lack of seed funding, investors, or employment prospects in the United States. On appeal the Petitioner argues that seed funding and investment are only two of the criteria that help to establish a person is well positioned to advance their endeavor and that the Director did not fully consider the Petitioner's extensive experience in his field when reaching their decision.

In our review of the record, as stated above, the Petitioner has not adequately defined the scope of his proposed endeavor or identified a specific employer or company in the United States for which he would act as a consultant. Without a clearly defined scope and objective, the Petitioner is unable to establish that he is well positioned to advance the proposed endeavor. Moreover, the Director was correct to point out that the Petitioner had not established an interest in his consultation duties that would allow his endeavor to rise to the level of national importance. The record does not reflect sufficient interest from potential customers, users, investors, or other relevant entities or individuals to demonstrate that he is well positioned to advance his proposed consultancy business. For these reasons, he has not established that he satisfies the second prong of the *Dhanasar* framework.

D. Whether on Balance a Waiver is Beneficial

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

The Petitioner, however, has not shown that he presents a significant benefit to the United States through his proposed endeavor or that his prospective work would serve an urgent national interest. While the Petitioner proposes to perform functions that improve the efficiency and collaboration with respect to the agribusiness industry in the United States, these factors do not outweigh the benefits inherent in the labor certification process. The Petitioner has not demonstrated an urgent national interest in his own contributions to achieve his aim, nor has he shown that he offers innovations or other contributions that would benefit the nation even if other qualified U.S. workers were available. In sum, the evidence does not indicate that the Petitioner offers contributions of such value that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. The Petitioner therefore has not established that he meets the third prong of the *Dhanasar* framework.

III. CONCLUSION

As the Petitioner has not established eligibility for EB-2 classification or met the requisite three prongs set forth in 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.

ORDER: The appeal is dismissed.