



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

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

In Re: 33815405

Date: SEP. 17, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the field of information technology, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the Petitioner established his underlying eligibility for EB-2 classification as an individual of exceptional ability, but that he did not establish he merited a national interest waiver. 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).¹ Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.² If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will

¹ If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

² USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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. *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,³ 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 Director determined that the Petitioner is an individual of exceptional ability and therefore qualifies for the underlying EB-2 visa classification. Thus, the remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver.

The Petitioner is an entrepreneur in the field of information technology who proposes to build a company providing education and consulting services related to technology and business practices. The Director concluded that the Petitioner did not establish any of the three prongs under the *Dhanasar* analytical framework, namely that his proposed endeavor lacked substantial merit and was not nationally important; that he was not well positioned to advance the proposed endeavor; and that on balance, waiving the job offer requirement would not benefit the United States. *Id.* On appeal, the Petitioner claims the Director erred in its conclusion, and that he meets all three of the *Dhanasar* prongs and merits a national interest waiver. For the reasons discussed below, we find that the Petitioner has not established eligibility for a national interest waiver under the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance

The first prong of the *Dhanasar* analytical framework, regarding 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. *Id.* In determining whether the proposed endeavor has national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we consider the proposed endeavor’s “potential prospective impact,” and “look for broader implications” noting that “[a]n undertaking may have national

³ 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).

importance for example, because it has national or even global implications within a particular field.” *Id.* Further, “[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.

The Petitioner provided a statement, through counsel, in support of his Form I-140 wherein he stated his proposed endeavor was to form his own company that provides education and consulting services in the information technology and business fields. He described the education services the company will provide as including preparatory courses, training programs, seminars, and workshops. The services will be provided both in person and online with an emphasis on cultivating a workplace culture conducive to professional development, and empowering employees to augment their proficiencies in technology, digitization, and business practices. The consultancy services entail the Petitioner’s provision of expert counsel, guidance, and strategic assistance to attain business objectives. He claims that the proposed endeavor is nationally important because it will sustain the growth of the information technology field and impact multiple businesses across different sectors, employ U.S. workers, contribute to the national economy through generation of taxes, and enhance societal welfare through digital transformation and use of ethical business practices.

The Petitioner also provided a business plan further describing the educational and consulting services his company plans to offer. In the plan the Petitioner claims his company will provide services to business professionals seeking to increase their knowledge in various areas of technology and business and enable them to acquire internationally recognized certifications. In particular, his company will provide seminars, workshops, webinars, courses to meet international certifications, in-company training, professional certifications, and a tech club. With regard to consulting services, he claims the company will provide specialized and individualized services and advice to work directly on a company’s problems, including integrating the latest technologies, predicting future trends, and analyzing current and future technology needs. Overall, he states that the main goals of the company are to share best market practices with the technological community, reduce financial loss for establishments, and extract the most value from an information technology professional. He claims the company will benefit the United States by addressing the talent shortage of information technology professionals, disseminating knowledge to remote areas of the country, and generating revenue and growth for companies. The company will be established in [redacted] but will serve clients in any part of the United States through physical and online offerings. Including himself, he plans to hire eight employees in the first year of operation, and by year five of operations, claims the company will have created 49 jobs.

Additionally, the Petitioner submitted, in part, letters of recommendation and industry articles and reports. These submissions generally speak to the Petitioner’s character and professional experience, and the overall importance of information technology and small businesses in the United States.

We acknowledge the above evidence which primarily describes the Petitioner’s experience in the field of information technology, or the overall impact information technology has on the economy of the United States. Our focus, however, is on the specific endeavor that the Petitioner proposes to undertake, rather than his credentials and experience or the importance of the industry or profession in which the individual will work. *Id.* at 889.

Here, the Petitioner has not offered sufficient information and evidence to demonstrate the education and consulting services he intends to provide through his company extend beyond the company's specific clientele and thus have broader implications at a level commensurate with national importance. Furthermore, he does not sufficiently explain or demonstrate how the specific services he proposes to provide offer original innovations to advance, or otherwise have wider implications in, the information technology field or the field of information technology education. While teaching activities in a science, technology, engineering, and math (STEM) may have substantial merit, such activities alone are not generally indicative of impact in the field of STEM education more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. Additionally, the Petitioner's general assertions regarding the contributions his proposed endeavor will make to the national economy, and the unsupported projections in his business plan, are insufficient to demonstrate his proposed endeavor is nationally important. Finally, even if we were to conclude that the financial projections in the business plan regarding revenue growth and job creation are well founded, which we do not, the Petitioner does not establish that the revenue or number of jobs created by his proposed endeavor would result in *substantial* positive economic effects or have significant potential to employ U.S. workers, particularly in an economically depressed area. *Id.* at 890.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, requiring that he demonstrate his proposed endeavor is nationally important. He therefore has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

As noted above, the Director also concluded that the Petitioner did not establish his proposed endeavor had substantial merit, that he was well positioned to advance the endeavor, or 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, as are required under the *Dhanasar* analytical framework. While the Petitioner also contests these conclusions on appeal, since our determination that the Petitioner did not establish that his proposed endeavor is nationally important is dispositive of his appeal, we decline to reach and hereby reserve the appellate arguments on these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

ORDER: The appeal is dismissed.