



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

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

In Re: 33959687

Date: SEP. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 Texas Service Center denied the petition, concluding the record did not establish the Petitioner's eligibility for the requested 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.

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

The Director determined that the Petitioner qualified as an advanced degree professional, but did not establish his eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not established eligibility for a national interest waiver under the *Dhanasar* framework, and dismiss the appeal.

The first *Dhanasar* 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The record reflects that the Petitioner plans to work in the United States as president and real estate broker for his company, [REDACTED], a “full-service real estate agency catering to both residential and commercial clients.” According to the Petitioner, his company will offer “comprehensive services, including property sales, property management, investment advisory, and rental assistance,” and will focus on attracting foreign investments to facilitate the development of “large-scale projects such as [s]ingle-[f]amily and [m]ulti-[f]amily developments, as well as commercial projects.” The company will also help clients identify and evaluate land parcels with development potential. As the company's president and real estate broker, the Petitioner will specialize in land development and investment services, and will “implement[] effective sales strategies, direct[] marketing campaigns . . . manag[e] personal, [and develop] trusting client relationships to maximize profits.” Accordingly, the Petitioner asserted that his endeavor was nationally important because it would attract foreign investment to the United States to generate revenues for the local economy and create employment opportunities. He also claimed his company would play a crucial role in the economy, as companies like his serve “as a cornerstone activity and contribute significantly to the [economy's] overall health.” And, by focusing on bringing foreign investment into Florida, the Petitioner asserted his company will stimulate the real estate sector, increase industry revenues, bolster foreign capital input, and support job creation.

In support of his endeavor, the Petitioner submitted a personal statement, a business plan, a national impact analysis, several letters of recommendation from past colleagues and clients attesting to 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).

experience and skills in the real estate industry, an expert opinion letter, as well as numerous articles and reports discussing the real estate market, real estate brokers and sales agents occupation, and the economic impact of foreign direct investment, as well as the affordable housing crisis in the U.S.

After issuing a request for evidence (RFE) granting the Petitioner an opportunity to provide additional evidence and information relating to the prospective impact of his endeavor, the Director denied the petition. In their decision, the Director concluded that, while the record established the substantial merit of the Petitioner's proposed endeavor, it did not establish its national importance because the prospective impact of the Petitioner's endeavor would not extend beyond his prospective clients to lead to broader implications to the industry or field at a level commensurate with national importance. Moreover, the Director determined that the Petitioner did not establish that his endeavor had significant potential to employ U.S. workers or otherwise offer substantial positive economic effects as contemplated in *Dhanasar*. See *Dhanasar* at 889.

On appeal, the Petitioner asserts that the Director did not properly consider the evidence in the record that established the national importance of his endeavor, including his personal statement, business plan, national impact analysis, as well as the industry reports and articles. Additionally, he claims that "[b]y insisting on evidence of [the] direct impact[of his proposed endeavor] before [its] implementation, the Director overlooked the inherent challenges of forecasting concrete outcomes for endeavors not yet implemented," and by failing to consider the indirect benefits outlined in the record, the Director imposed a higher burden of proof beyond the preponderance of evidence standard. We disagree.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon a de novo review of the record, we see no error in the Director's evaluation of the evidence, as it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance as contemplated under the *Dhanasar* framework. Moreover, we disagree with the Petitioner's assertion that the Director erred in requesting evidence establishing his endeavor's direct impact. The Director did not require the Petitioner to establish that his endeavor had already resulted in broader implications to his field or already resulted in substantial economic benefits, but rather that the claimed broader implications be directly attributable to his endeavor. We agree that the *Dhanasar* framework does not require a petitioner to establish that their endeavor is more likely than not to succeed, however unsubstantiated claims are not sufficient to establish national importance, and the prospective impact claimed by the Petitioner must be directly attributable to his *specific* endeavor.²

Here, the Petitioner continues to rely on the cumulative impact of the real estate industry and foreign direct investment rather than explaining how his *specific* endeavor will result in broader implications commensurate with national importance. Likewise, the Petitioner contends that the Director erred in failing to consider the articles and reports in the record that "outlin[e] the expected economic and social impacts of [his] proposed endeavor," claiming that these articles highlight the economic and

² See generally 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

social impacts of his proposed endeavor, but the articles in the record discuss the cumulative benefits of his field, and do not discuss the Petitioner's specific endeavor. In this regard, several of the Petitioner's claims of national importance could reasonably apply to any individual working in real estate development, but Congress did not provide a blanket exemption for this occupation with respect to the job offer and labor certification requirement.

We agree with the Director's conclusion that, while the evidence in the record, including the industry articles and reports, establish the substantial merit of the Petitioner's endeavor, the Petitioner has not established that his endeavor has national importance as contemplated in *Dhanasar*. In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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 appeal, the Petitioner claims that his endeavor is nationally important because it will stimulate economic growth in the United States by increasing foreign investment into the real estate sector, and in particular in the Florida region. Additionally, he claims that his company will have broad impact to both the real estate sector and the U.S. economy, beyond the immediate benefits to his company and its clients. And the Petitioner also claims that the Director erred in ignoring the indirect benefits of his proposed endeavor, including its societal and economic benefits. However, rather than identifying the specific impact his company will have, the Petitioner continues to rely on the cumulative benefits of foreign direct investment, claiming that he provided "specific data and statistics showing the substantial economic benefits of bringing foreign real estate investment." Yet, this evidence speaks to the substantial merit of his endeavor, rather than its national importance. For example, the Petitioner supports his claims by relying on the U.S. Chamber of Commerce recognition of foreign investment as instrumental in promoting economic growth, as well as the evidence in the record discussing the cumulative economic impact of foreign direct investment in the real estate sector as well as Florida's robust investment market, but the Petitioner has not established how his company will meaningfully impact this market on a level commensurate with national importance. As stated, when determining national importance, the industry alone is not sufficient to establish national importance, instead we focus on the broader implications of "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner also asserts on appeal that his "extensive background in real estate and foreign investments plays a pivotal role in facilitating foreign investment transactions," and claims that the Director erred in disregarding the evidence that establish he had already "made significant contributions to facilitating real estate transactions for foreign investors," including the letters of recommendation. Yet, while the letters of recommendation may establish the Petitioner's varying experience within the real estate industry, they provide little probative value in establishing the national importance of his endeavor as they primarily focus on his prior experience. We recognize that the Petitioner has had a successful career, but a petitioner's expertise and record of success 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 the national importance of his proposed endeavor.

Likewise, we reviewed the letters of intent to invest by the Petitioner’s prospective clients, and conclude that these letters do not support the national importance of the Petitioner’s proposed endeavor, as the Petitioner has not shown how these investments, even if realized, will result in broader implications to his field or the substantial economic effects discussed in *Dhanasar*. For example, while one investor claims that his intent to invest is contingent on only working with the Petitioner to facilitate his investment, the Petitioner did not show how this specific investment would impact the intended area of operations, or otherwise impact the industry or economy as claimed.

Similarly, we have reviewed the expert opinion letter and conclude that, contrary to the Petitioner’s assertions, the expert opinion letter does not establish the national importance of his endeavor. For instance, while the expert discusses the Petitioner’s “rich experience,” and asserts that his in-depth understanding of the real-estate market will lead his company to success, they do not establish that the Petitioner’s *individual* work will result in broader implications to his field or will result in substantial economic impact commensurate with national importance. Instead, they focus on the impact of the real estate market and foreign investments generally. For example, while the expert opinion letter claims his endeavor will result in broad societal benefits, and impacts national initiatives including the promotion of home ownership, the expert supports this assertion by relying primarily on the broad benefits brought by the real estate industry, rather than the prospective benefits of the Petitioner’s specific endeavor. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int’l*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen’s eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

Likewise, the Petitioner relies on the affordable housing crisis in the United States to establish the national importance of his endeavor, stating that his endeavor aligns with national housing strategies. However, while his endeavor’s alignment with federal initiatives may speak to the substantial merit of the endeavor, it does not establish the specific endeavor’s potential prospective impact. Moreover, the record does not establish that the Petitioner’s endeavor will meaningfully impact this initiative.

We also agree with the Director that the Petitioner has not established that the endeavor would have a “a significant potential to employ U.S. workers” or otherwise reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. The Petitioner relies on the economic impact of real estate development in general, pointing, for example, to models estimating the economic impact of the development of 100 new homes, but the Petitioner does not establish that his specific endeavor will result in “substantial positive economic effects” rather than relying on the impact of development in general. In other words, while any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would rise to the level of national importance. We’ve also reviewed the business plan, which states that, by its fifth year of operation, the company intends to employ 8 employees, have a total annual payroll expense of \$328,542, and generate total annual

sales of \$1,068,806. Notably, however, the business plan does not provide sufficient explanation for the basis of these projections. And, even if the endeavor's revenue and job creation projections were properly explained and supported with evidence, they do not establish that the endeavor would operate on a scale rising to the level of national importance, as the Petitioner has not explained how these proposed employment numbers and revenue will impact the area of intended operations.

For the reasons discussed, the Petitioner has not demonstrated that his proposed endeavor would be of national importance, and he therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of 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. 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 under *Dhanasar*'s second and third prongs as well as a determination as to whether the Petitioner has met the requirements of EB-2 classification. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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.