



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

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

In Re: 33950809

Date: SEPT. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) manager and entrepreneur, 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but did not establish 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 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 demonstrates eligibility for the underlying EB-2 classification, they must then establish 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

- 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 Petitioner's proposed endeavor is to develop an IT infrastructure and database consulting and outsourcing services firm providing on-premises server administration outsourcing, data backup and recovery, IT help desk and user support outsourcing, technical support for cloud outsourcing, and network design and configuration outsourcing. In his business plan for the company, the Petitioner states he will be the owner and general and operations manager of the firm which will have headquarters in Massachusetts and two business units in Illinois and North Carolina.

The Petitioner submitted evidence that he holds the equivalent of a United States master's degree in physics. The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

A. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined the Petitioner established the substantial merit of his proposed endeavor. We agree.

The Director concluded, however, that the Petitioner did not establish the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that his proposed endeavor would have substantial positive economic effects or would impact his field more broadly on a level commensurate with national importance.

On appeal, the Petitioner asserts the Director erred and his proposed endeavor will have a substantial economic impact because it will employ 24 workers, have a payroll expense of \$1,715,435, and an estimated revenue of \$9.43 million after five years. The Petitioner's business plan projects the company will employ eight full- and part-time workers in the first year, increasing to 24 full- and part-time workers by the fifth year and will pay wages of \$540,591 in the first year, increasing to \$1,715,435 in the fifth year. The business plan projects revenue of \$850,000 the first year, increasing

to \$3,400,000 in the fifth year. The business plan states that in 2023 the IT consulting industry revenue was \$665.9 billion, the industry employed three million people, and paid wages of \$285.2 billion.

The Petitioner's business plan does not demonstrate that his company will have substantial positive economic effects in the IT consulting industry. The full- and part-time employment of eight to 24 people does not demonstrate significant potential to employ United States workers in an industry that employs three million people. The record also does not establish that the company would operate in economically depressed areas. The company's projected payment of wages and revenue also does not establish that the company would have substantial positive economic effects on an industry that paid wages of \$285.2 billion and had revenue of \$665.9 billion in 2023. *See id.* at 890 (discussing significant potential to employ United States workers and other substantial positive economic effects as indicative of national importance).

The Petitioner also claims his proposed endeavor has national importance because it supports federal initiatives including the American Innovation and Competitiveness Act, the Cybersecurity National Action Plan, and the National Strategy for Critical and Emerging Technologies. The Petitioner did not submit evidence of the specific aspects of these initiatives that the Petitioner's proposed endeavor would support and how that support would extend beyond his company's individual clients to impact his field more broadly. *See id.* at 889 (explaining "we look for broader implications").

The Petitioner further asserts the Director did not give due regard to his recommendation letters. The Petitioner submitted letters from employers and colleagues who praise his achievements and skills, but do not discuss his proposed endeavor. For example, S-O-² praises the Petitioner's work at [REDACTED] and states his "skills reinforce his professionalism, which he constantly applies to all sections of his work." O-M-V- commends the Petitioner's work at [REDACTED] and describes him as "a unique professional who will only add value to the United States." C-B- praises the Petitioner's successful work on the [REDACTED] project and expresses confidence that with his past record of success and unique skills and methods, he "will serve the U.S. national interest now and in the future." C-G- states the Petitioner "will be a great asset to the United States" because he "can manage complex situations with good outcomes" and was a leader in the design and implementation of [REDACTED] a cloud banking IT service in Turkey. H-S- describes the Petitioner as "a seasoned IT leader with a wealth of experience and a proven ability to drive business growth" who "will be a great asset to the United States." These letters attest to the Petitioner's professional accomplishments and skills and express confidence in his ability to succeed in the United States, but they do not address the potential prospective impact of his specific proposed endeavor. *See id.* (explaining we consider the potential prospective impact of the proposed endeavor when assessing national importance).

The Petitioner also submitted a letter from B-W-, Professor of Computer Science, Information Systems and Cybersecurity at [REDACTED], expressing his opinion that the Petitioner qualifies for a national interest waiver. B-W- discusses the IT infrastructure services market, the digital transformation market, and the IT consulting industry in which the Petitioner's company will operate. He states that by providing IT infrastructure and database services, the Petitioner's company will promote economic growth and job creation, and enhance the competitiveness of U.S. companies. B-

² We use initials to protect the privacy of the referenced individual.

W- also opines that the Petitioner's company will broadly enhance societal welfare or cultural enrichment through job creation, improved business efficiency, technological advancements, knowledge sharing, and community engagement. However, the Petitioner's business plan does not discuss how the company will share knowledge or be involved in community engagement. B-W- further states the Petitioner's proposed endeavor aligns with and supports government initiatives in science, technology, engineering, and mathematics, digital equity, cybersecurity, and infrastructure. B-W- does not, however, specify how the Petitioner's work would extend beyond his company's clients to support these government initiatives or otherwise impact his field more broadly on a level commensurate with national importance. *Cf. id.* at 892 (stating Dhanasar submitted probative expert letters describing the importance of his specific research as it related to U.S. strategic interests).

The Petitioner also claims the Director did not give due regard to industry articles. The Petitioner submitted articles on operations management, the project manager shortage, how operation managers increase business profitability, immigrants creating jobs, the need for an entrepreneurial revolution, operations management trends, and immigrants and workforce development. These articles address the importance of operation managers, entrepreneurs, project managers, and immigrants' contributions to the U.S. workforce. However, our assessment of national importance does not focus on the importance of issues affecting an industry or our nation in general, but "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* Here, none of the articles mention the Petitioner or discuss his proposed endeavor and its potential prospective impact. *See id.* at 889 (explaining we consider the proposed endeavor's potential prospective impact when assessing national importance).

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. Here, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company's clients to impact his field more broadly in a manner indicative of national importance. The Petitioner has not established that his proposed endeavor has significant potential to employ United States workers, would have other substantial positive economic effects, or would otherwise impact his field more broadly on a level commensurate with national importance.

C. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of his specific proposed endeavor and he does not meet the first prong of the *Dhanasar* framework. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

III. CONCLUSION

The Petitioner has not established the national importance of his proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, he has not demonstrated that he

is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.