



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

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

In Re: 27310813

Date: AUG. 03, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a tax analyst, 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 the record did not establish that the Petitioner was eligible for, and merited as a matter of discretion, a national interest waiver. The matter is now before us on appeal. 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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 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<sup>1</sup>, 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.

## II. ANALYSIS

The Petitioner is a tax analyst with several years of experience working for large accounting firms. He intends to continue to operate his company in Florida, providing financial and tax services to companies and individuals.

The Director determined that the Petitioner is eligible for the EB-2 classification as a member of the professions holding an advanced degree. The sole issue on appeal is whether he qualifies for, and merits as a matter of discretion, a waiver of that classification's job offer requirement.

### A. Substantial Merit and National Importance

The first prong of the *Dhanasar* analytical framework, 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.

In her decision, the Director concluded that, based upon the Petitioner's description of his proposed endeavor and the supporting documentation regarding the importance of tax and financial services, his proposed endeavor is of substantial merit. However, the Director went on to conclude that the Petitioner's projections of job creation and earnings included in his business plan did not demonstrate that his proposed endeavor would have significant potential to employ U.S. workers or provide other substantial economic benefits at the state or national level. In addition, the Director determined that the evidence did not establish that the proposed endeavor would have broader impacts beyond that of the clients the Petitioner's company would serve.

On appeal, the Petitioner asserts that the Director imposed novel requirements in her decision and exceeded the evidentiary standard of preponderance of the evidence. However, he does not identify a specific instance where the Director applied a higher evidentiary standard or imposed requirements beyond those in the pertinent statute, regulations, and policies, but instead lists the evidence in the record and makes a conclusory statement. This is not sufficient to show that the Director made a legal or factual error in his decision as the Petitioner asserts.

Regarding the national importance of his proposed endeavor, the Petitioner first refers to the projections in his business plan which predict total revenue of his company of almost \$10 million over

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<sup>1</sup> See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

five years. However, the business plan provides no analysis or explanation of how these estimates were calculated, and the unaudited financial statements for the business covering calendar year 2021 and the first nine months in 2022 are not verifiable evidence and reflect the statements of management, and they do not support the estimates. Accordingly, this evidence does not sufficiently show how the proposed endeavor would potentially have substantial positive economic effects or would otherwise be of national importance.

The Petitioner also makes several broader arguments about the national importance of his proposed endeavor. For example, he states that he “will continue to work on nationally important projects,” but does not specify any particular potential projects in which he or his company will be engaged. He also refers to statistics in the supporting evidence about trade between the United States and Brazil, and the effect of immigrant entrepreneurs on the national economy. However, in determining national importance, we focus on “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. The fact that immigrant investors and trade with Brazil have an overall positive economic impact on the U.S. national economy does not establish that the Petitioner’s tax and financial consulting business will likewise be of national importance.

Another argument repeatedly put forth by the Petitioner in support of the national importance of his proposed endeavor concerns his previous experience as a tax and financial advisor. For example, he asserts that due to this experience he “will successfully manage his business” and is “set to help the U.S. stay competitive.” He also stresses on appeal that he is “extremely knowledgeable in complex regulatory systems, and diverse market standards for cross-border business transactions.” But the Petitioner’s education, training, and experience relate to the second prong of the *Dhanasar* analytical framework, where the focus is on the individual’s positioning to advance the proposed endeavor. *Id.* at 890. These factors do not help to show the national importance of the Petitioner’s proposed endeavor.

For the reasons detailed above, we agree with the Director’s conclusion that the Petitioner has not established that his proposed endeavor is of national importance, and that he therefore does not meet the first prong of the *Dhanasar* framework.

#### B. 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 Director determined that the Petitioner is well positioned to advance his proposed endeavor. Based upon the evidence of the Petitioner’s education and experience, as well as his plans and steps taken in starting his business, we agree.

### III. CONCLUSION

The Petitioner is eligible for the EB-2 classification as a member of the professions holding an advanced degree. But he has not established the national importance of his proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework, and has therefore not established that he is eligible for, and merits as a matter of discretion, a national interest waiver. 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 regarding his qualification under the third prong of the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory 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 alternative issues on appeal where an applicant is otherwise ineligible).

**ORDER:** The appeal is dismissed.