



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

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

In Re: 27694037

Date: AUG. 15, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur, 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 petition, concluding that although the Petitioner qualified as an advanced degree professional, he had not established 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. 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.

“Advanced degree” means any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. *Id.*

“Profession” means one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32),¹ as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

“Exceptional ability” in the sciences, arts, or business 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. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).² Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. We will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.³

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 discretion⁴, 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

A. EB-2 Visa Classification

As indicated above, the 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.

The Director determined that the Petitioner is a member of the professions holding an advanced degree. However, upon de novo review, we disagree. The Petitioner provided official academic records demonstrating that he holds the equivalent of U.S. bachelor’s degree. Although he also submitted letters of recommendation from colleagues, they 1) are not from former or current employers, 2) do not include specific dates of employment, and 3) do not indicate whether the employment was full-time. As such, the letters do not meet the requirements of 8 C.F.R. § 204.5(k)(3)(i)(B). Therefore, the Petitioner has not established eligibility for the EB-2 classification as an advanced degree professional and we withdraw the Director’s finding on this issue.

In addition, we note the Petitioner initially claimed he qualifies for EB-2 classification as an individual of exceptional ability. The Director requested additional evidence relating to this claim in a request

² 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).

³ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

⁴ *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).

for evidence (RFE). However, the Petitioner did not address it in his response to the RFE or on appeal. Here, since the evidence in the record does not establish by a preponderance of the evidence that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion for the reasons we will discuss below, we will reserve this issue for future consideration should the need arise.⁵

B. National Interest Waiver

According to his initial professional plan, the Petitioner proposed to establish an educational and research institute in order to share his “unique knowledge related to Social Science and Cotemporary History” and “will contribute to the United States through his lecturing and other services offered on the basis of very specific and profound expertise in the social sciences, contemporary history, and criminology.” Further, the Petitioner stated that:

In addition to providing courses about these topics, the Educational and Research Institute will be dedicated to identifying community needs and requirements, helping raise public awareness regarding prevalent issues within various communities in the U.S., developing strategies to tackle such issues, and raising and managing funds to finance the implementation of these strategies, building his national and international acclaim.

In response to the Director’s RFE, the Petitioner submitted an updated professional plan indicating that he will “contribute to the U.S. through his dedicated seminars and consulting services regarding transnational crime and cybercrime” via his educational and research institute.

The first prong of the *Dhanasar* analytical framework, 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.* For example, endeavors related to research, pure science, and the furtherance of human knowledge may qualify. *Id.*

In her decision, the Director determined that the Petitioner’s proposed endeavor is of substantial merit, and we agree. Turning to the national importance of his endeavor, the Director concluded that the Petitioner did not establish that his proposed endeavor would prospectively impact the region or nation beyond its students.

On appeal, the Petitioner contends that the Director erred and asserts that he has submitted “profuse documentation evidencing the national importance of his proposed endeavor” including an opinion letter from a professor at [redacted] College of the [redacted] of New York, recommendation letters, and documentation for his past achievements. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*,

⁵ 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 alternate issues on appeal where an applicant is otherwise ineligible).

26 I&N Dec. at 889. We further noted 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.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s professional plan states that his endeavor will “focus on supporting interdisciplinary research, identifying and developing new collaborative links to U.S. communities, and offering courses to various U.S.-based individuals, professionals, and organizations involved with the criminal justice system, criminal law, civil and human rights, youth justice, crime prevention, community safety, international crimes, and crime contemporary history,” the record does not show through supporting documentation how his proposed endeavor stands to sufficiently extend beyond its prospective students and/or clients, to impact the industry or the U.S. economy more broadly at a level commensurate with 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.

In addition, the Petitioner stresses his professional history and past achievements within the field of law. However, the Petitioner’s experience, skills, expertise, and abilities relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his business activity stands to provide substantial economic benefits to Florida or to the United States. We note that the opinion letter describes the Petitioner’s business in terms that largely resemble his professional plan submitted in response to the RFE. Importantly, neither the opinion letter nor the professional plan’s projections concerning the business are supported by probative evidence to demonstrate the basis of the estimates forecasted. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. In addition, the professional plan does not establish the benefits to the regional or national economy resulting from the company’s projected profits and revenues would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 890. Similarly, the Petitioner did not demonstrate that his claimed future staffing levels would provide substantial economic benefits to Florida or the region or U.S. economy more broadly at a level commensurate with national importance. For instance, he did not demonstrate that such hiring figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not establish that, beyond the limited benefits provided to its students, clients, and employees, the proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

Because the documentation in the record does not establish by a preponderance of the evidence the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Therefore, further analysis of his eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose. We will reserve these issues for future consideration should the need arise.⁶

III. CONCLUSION

Although the Petitioner has shown that his proposed endeavor as an entrepreneur in the United States has substantial merit, he has not shown by a preponderance of the evidence that his proposed endeavor is of national importance. Accordingly, the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above-stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁶ See *Id.* at 25.