



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

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

In Re: 28787954

Date: DEC. 01, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an industrial engineer, 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 Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, 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 because the Petitioner did not establish that his proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. at 884. Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *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).

**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. Next, a petitioner 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 Acting Director determined that the Petitioner was a member of the professions holding an advanced degree.<sup>2</sup> The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner states that he is an industrial engineer specialized in the mass consumption industry with 14 years of experience in managing supply chain logistics. His proposed endeavor is to “create a team that will provide consulting services in management and handling of logistics processes to Supply Chain companies ... This would help them to expand their business throughout the United States, generating a large number of jobs. This would in turn generate construction of facilities that would create indirect jobs, as well as rental of facilities managed by these businesses.” To reach potential clients in the industrial sector, the Petitioner states that he will “analyze the impact on Supply Chains post pandemic in order to bring improvements in distribution logistics and Supply Chain management” and will present the results of his study with analyzed data and recommendations for improvement through “conferences and circulars.” He states that his services will “[optimize] the use of space and modernize facilities to have a just-in-time operation and mitigate Supply Chain bottlenecks.”

With the initial filing the Petitioner submitted evidence of his education and experience, a personal statement describing his proposed endeavor and claimed eligibility for a national interest waiver, as well as recommendation and support letters, and certificates of achievement. He also submitted industry reports and articles discussing the field of supply chain management and its importance and initiative of the U.S. government. In his personal statement, the Petitioner states that his proposed endeavor would be a source of direct employment for “approximately 60 employees at the beginning of operations.” He also states that his proposed endeavor will indirectly create employment in the areas of transportation and maintenance for a new supply chain logistics facility.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Petitioner’s response to the RFE includes an updated personal statement, additional industry reports and articles, and additional recommendation letters.

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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).

<sup>2</sup> The record demonstrates that the Petitioner holds the equivalent of a U.S. bachelor’s degree awarded in 2008, followed by more than five years of progressive experience. See 8 C.F.R. § 204.5(k)(3)(i)(B).

After reviewing the Petitioner's RFE response, the Acting Director determined that the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has substantial merit. However, she concluded that the Petitioner had not demonstrated that his proposed endeavor had national importance, that he was well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Acting Director stated that the record did not demonstrate that the Petitioner's proposed endeavor will have a regional or national impact at a level consistent with having national importance, or that the Petitioner's work will have broader implications in his field of endeavor, going beyond his own business and clients. The Acting Director further noted that the Petitioner did not provide a business plan to support his claimed intention to hire 60 employees or to document that he would pay the employees at a rate that would have substantial positive economic effects. Additionally, the Acting Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of his prospective contributions to the United States, an urgent national interest in his contributions, the potential creation of jobs, or that his self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief and asserts that the Acting Director's decision "contains instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion." The Petitioner asserts that the Acting Director imposed a novel or unique requirement in requiring a business plan. He further asserts that, while direct job creation is a factor to be considered, the Acting Director's focus on job creation is an abuse of discretion. Additionally, the Petitioner asserts that the Acting Director's decision is arbitrary and capricious because "there has been no formal or substantial analysis of the evidence and no explanation of the reasoning behind the decision to exclude the evidence and reach a conclusion." In his brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that he merits a national interest waiver.

#### A. Substantial Merit and National Importance

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

The relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Id.* In *Dhanasar*, 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.

The Petitioner submits articles and industry reports describing the importance of supply chain management, as well as Executive Orders demonstrating that supply chain management is a national

initiative.<sup>3</sup> An undated statement from the Council of Supply Chain Management Professionals titled “The Importance of Supply Chain Management” provides information to those interested in beginning a career in Supply Chain Management. Although the statement lists the benefits of supply chain management for businesses, the Petitioner does not explain how the statement demonstrates that his specific proposed endeavor is of national importance. Similarly, a March 2018 article from the Harvard Business Review titled “The Supply Chain Economy and the Future of Good Jobs in America,” demonstrates that the supply chain economy is large and important in the United States but does not address the national importance of the Petitioner’s specific proposed endeavor. An article from Investing.com dated August 2022 and titled “Alert: China’s Covid may revive bottlenecks and stall inflation,” briefly discusses the negative economic impact, including supply chain disruptions, caused by the pandemic and a later resurgence of cases. However, the article provides general information and does not focus on the Petitioner’s specific proposed endeavor. As noted above, the Acting Director determined the endeavor has substantial merit, and we agree. However, the question we are examining here is national importance.

When 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 “the specific endeavor that the foreign national proposes to undertake.” *See Matter of Dhanasar*, 26 I&N Dec. at 889. Much of the Petitioner’s evidence relates to the field of supply chain management generally, rather than his specific proposed endeavor. Although we agree that supply chain management is important and may be the subject of national initiatives, we conclude that this does not necessarily establish the national importance of the Petitioner’s specific proposed endeavor. Even considering the articles and reports, collectively and in the totality of circumstances, the record contains insufficient information or evidence regarding the Petitioner’s proposed endeavor to show broad potential implications demonstrating national importance.

The Petitioner also submits his personal statements to support the national importance of his proposed endeavor. As noted, to establish national importance, the Petitioner must demonstrate the proposed endeavor’s impact. In *Dhanasar*, we 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.* Although the Petitioner states that his experience in supply chain management will contribute to the U.S. economy by generating business for U.S. companies and creating jobs, he has not supported these assertions with sufficient independent, objective evidence. The projections of the Petitioner’s company’s job creation as stated in his initial personal statement are also unsupported in the record.

As the Acting Director notes, the record does not include a business plan for the Petitioner’s proposed endeavor.<sup>4</sup> Although the Petitioner states in his personal statements that he intends to “contact companies in the industrial sector ... to analyze in depth the factors that have negatively impacted

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<sup>3</sup> While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

<sup>4</sup> As the Petitioner notes on appeal, a specific model or plan for how to implement the proposed endeavor may be useful in establishing the second *Dhanasar* prong, which shifts the focus from the endeavor to the petitioner, and how well-positioned they are to advance it. *See Id.* at 890; *see also generally* 6 *USCIS Policy Manual* F.5(D)(1), <https://www.uscis.gov/policy-manual>. However, with respect to the first *Dhanasar* prong, “In determining national importance, the officer’s analysis should *focus on what the beneficiary will be doing* rather than the specific occupational classification.” 6 *USCIS Policy Manual* F.5(D)(1) (emphasis added).

their supply chain in the United States,” the Petitioner does not describe his planned study or methodology in detail, a key component to how the Petitioner intends to implement his proposed endeavor. Nor does the Petitioner identify the location of the conferences at which he intends to present his study results or provide other details about these events.

We do not agree that the Acting Director imposed a novel or unique requirement in noting the lack of a business plan or an explanation of how the Petitioner intends to implement his endeavor. The Petitioner does not explain how else we would assess the potential prospective impact of the endeavor without considering his business plan, and the basis for those specific endeavor estimates beyond generalized projections, as well as the work he intends to do, or the other ways in which he seeks to implement his endeavor. The Petitioner’s personal statements are not specific or detailed enough for us to assess the potential prospective impact of it in the abstract, without considering the specific ways in which the Petitioner intends to implement this goal.

The Petitioner also asserts on appeal that the Acting Director abused her discretion by placing an “adamant focus on job creation.” We agree that the significant potential to employ U.S. workers, or providing other positive economic effects, is only one of the ways in which national importance may be demonstrated and is not required. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. However, this claim does not demonstrate that the Acting Director erred in finding that the record does not establish the proposed endeavor’s significant potential to employ U.S. workers. The lack of potential to employ U.S. workers was not the sole basis for the Acting Director’s finding that the Petitioner did not establish national importance, and the Acting Director did not state or imply that demonstrating potential to employ U.S. workers is necessary for establishing national importance. Rather, the Acting Director included this analysis as one of several ways in which national importance may be established.<sup>5</sup> The Acting Director correctly notes that the Petitioner’s unsupported testimonial evidence does not establish his claims and the record lacks corroborating evidence.

The Petitioner next claims that the denial is deficient because the Acting Director did not consider the entirety of the evidence in the record. The Petitioner states that the failure to consider all the relevant evidence submitted has been found to be an abuse of discretion and cites to *Buletini v. INS*, 860 F. Supp. 1222, 1223 (E.D. Mich. 1994). While we agree that an adjudicator should consider the relevant evidence in the record,<sup>6</sup> we also note that U.S. district court decisions, such as the one the Petitioner cites, are not binding precedential authority. The reasoning underlying a district judge’s decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). More importantly, however, the Petitioner does not sufficiently support his claim that there was relevant evidence that the Acting Director did not consider.

To support this claim, the Petitioner notes that the Acting Director stated in both the RFE and in the decision that there is no evidence to corroborate the substantial positive economic impact of the

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<sup>5</sup> Discussing national importance, the USCIS Policy Manual states, “Economically, [the proposed endeavor] may have ‘significant potential to employ U.S. workers’ or ‘other substantial positive economic effects, particularly in an economically depressed area.’ Therefore, petitioners should submit a detailed description explaining the proposed endeavor and supporting documentary evidence to establish that the endeavor is of national importance.” <sup>6</sup> *USCIS Policy Manual* F.5(D)(1), <https://www.uscis.gov/policy-manual>.

<sup>6</sup> *See* 8 C.F.R. § 103.2(b)(1).

proposed endeavor. The Petitioner contends that this demonstrates that the Acting Director did not adequately review the initial evidence or evidence submitted in response to the RFE, because “both of these documents contained ample arguments supported by objective documentary evidence.” But as stated above, the Acting Director included the lack of economic impact as one of several ways in which national importance was not established, and we conclude that this does not support the claim that the Acting Director did not review the record.

The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the general importance of the supply chain management field. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor’s national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner’s appellate arguments regarding the two remaining *Dhanasar* prongs.<sup>7</sup> See *INS v. Bagamasbad*, 429 U.S. at 25.

### III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in 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.

**ORDER:** The appeal is dismissed.

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<sup>7</sup> Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Acting Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, that he was well-positioned to advance the proposed 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. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response and does not provide any new evidence. The Acting Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner met the three *Dhanasar* factors and would be eligible for a national interest waiver. The Petitioner’s assertions on appeal do not establish that he meets all of the three *Dhanasar* prongs.