



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

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

In Re: 28808045

Date: DEC. 4, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, describing himself as an entrepreneur in the civil engineering market, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition. The Director concluded the Petitioner qualified as an advanced degree professional, but further determined that he did not demonstrate his eligibility for 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.

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 USCIS may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates that:

¹ *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).

- 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, a native and citizen of Brazil, indicated his proposed endeavor was to “work as an Entrepreneur in civil engineering.” The Petitioner emphasized that he worked on “leading and critical roles in companies in Brazil” and stated he had a “proven ability to make major business contributions in his field.” The Petitioner indicated he planned to develop and expand his company L-B-P- through which he would provide “innovative constructions [*sic*] services, planning from a warehouse for a large corporation to the cozy and affordable home of an American family.” The Petitioner asserted his company would provide professional civil engineering services in construction and project management, also accounting for the environment and sustainable building. He further indicated his company would provide services in commercial construction, project management, industrial construction, public buildings, infrastructure engineering, private housing, public housing, and client support and consulting.

The Petitioner stated his company would generate jobs in the United States in underserved areas, promote clean energy jobs, and help economic recovery from the COVID-19 pandemic. The Petitioner indicated that he and a partner planned on investing \$50,000 in the new company and projected that it would “contract services from almost 3,000 workers from the various practices involved in construction works,” generating the payment of wages totaling \$21 million and \$1.3 million in federal tax revenue. The Petitioner stated the following when explaining the impact of his new business:

Entrepreneur-driven businesses with innovative focuses enable the development of new markets and the creation of new wealth. By offering unique products and services, entrepreneurs like myself break with tradition and reduce dependence on obsolete systems and technologies, resulting in greater economic freedom. Entrepreneurs also drive change with innovation, where new and improve products support the development of new markets.

Further, the Petitioner submitted three support letters from colleagues discussing construction projects he worked on in Brazil and attesting to his high level of skill and experience. The Petitioner also provided an expert opinion from [REDACTED] Adjunct Professor at the [REDACTED] College of New York, who stated that the Petitioner has “proven experience in the areas of both residential and commercial development.” [REDACTED] also concluded that “the United States would greatly benefit from the expertise and skills of an experienced entrepreneur in the field of civil engineering” like the Petitioner.

The Director later issued a request for evidence (RFE) stating the provided evidence did not sufficiently establish that the Petitioner’s proposed endeavor would have national importance or national or global implications with a particular field or industry. The Director requested the Petitioner submit a more detailed description of the proposed endeavor and an explanation as to why it would

have national or even global implications, or have significant potential to employ U.S. workers or lead to substantial positive economic effects.

In response, the Petitioner stated he would pursue his endeavor by “leveraging [his] years of project management, management planning, and cost control in the execution of residential and industrial works.” The Petitioner again emphasized that he would generate 3,000 jobs in the United States and projected his company would generate approximately \$7.6 million in revenue during its first five years of years of operation. The Petitioner asserted company would “help fuel small business growth in historically underutilized business zones,” and through civil engineering expertise, “expand the housing market in the areas of private housing, commercial real estate, and industrial real estate.” In addition, the Petitioner stated that his venture would “spur significant foreign direct investment (FDI) opportunities for the [United States], further contributing to the nation’s economy and offering economic relief after the financial strains left by COVID-19.” He further noted that his proposed endeavor would provide for “further expansion of the e-commerce sector” and asserted that he had already identified customers he could assist in “strategic planning, real estate, budgeting, building and construction.” The Petitioner again submitted his business plan, highlighting the previously discussed hiring and financial projections of his proposed company, and he also provided several articles covering the importance of construction to the economy and a shortage of skills and talent in manufacturing and engineering in the United States.

In denying the petition, the Director determined the submitted evidence did not demonstrate that the Petitioner’s proposed endeavor would extend beyond his company and impact the field more broadly. The Director concluded the Petitioner did not sufficiently establish that his proposed endeavor would generate employment creating a substantial positive economic benefit to his region or the nation. The Director also determined that the Petitioner did not submit a sufficient explanation of his proposed endeavor and its proposed prospective impact.

On appeal, the Petitioner contends that his professional activities would “generate substantial ripple effects upon key engineering activities on behalf of the United States” and states that his proposed endeavor “is a vital aspect of U.S. construction operations and productivity.” The Petitioner points to his more than 24 years of progressive experience in civil engineering and asserts his work would have broad implications on the U.S. engineering industry “within key commercial segments.” The Petitioner states that his new company will “manage construction projects that will exceed customer expectations by seeking the best cost/benefit, rapid and high-quality execution, and reliability in meeting deadlines and efforts,” noting that his over 24 years of experience will bring competitive services, help develop the country, and produce income for the U.S. economy.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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. The Director concluded that the Petitioner did not sufficiently articulate his proposed endeavor.

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 “the specific endeavor that the foreign national proposes to undertake.” *See Matter of Dhanasar*, 26 I&N Dec. at 889. 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. 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.

As a preliminary matter, when the Petitioner discussed the potential prospective impact of his proposed endeavor, he regularly pointed to his skills and experience. For instance, he emphasized on appeal his more than 24 years of experience in civil engineering in Brazil. However, the Petitioner’s skills, experience, and knowledge in and of itself is not relevant to demonstrating the national importance of his proposed endeavor but is only probative as to whether he is well positioned to advance his endeavor under the second prong of *Dhanasar*. See *Matter of Dhanasar*, 26 I&N Dec. 884, 892-93. Therefore, we do not find the emphasis on the Petitioner’s skills and experience throughout the record, and on appeal, convincing in establishing the national importance of his proposed endeavor.

Further, as discussed by the Director, the Petitioner has provided a vague proposed endeavor, making it difficult to discern its actual potential prospective impact. The Petitioner’s proposed endeavor is not sufficiently clear, beyond continuing his work in civil engineering in the United States and starting a company providing services in various fields within the general realm of construction. The Petitioner indicated that his new company would provide services in a wide array of construction and engineering fields, including commercial construction, project management, industrial construction, public buildings and housing, infrastructure engineering, the private housing market, among others. Therefore, not only is the Petitioner’s proposed endeavor left unclear, he also did not sufficiently articulate in which field his endeavor would have a national or global impact. The Petitioner has submitted an ambiguous proposed endeavor, setting forth purported wide-ranging intentions to operate in various fields, thereby leaving its potential prospective impact uncertain.

The Petitioner also submitted a series of generic assertions with respect to the proposed national impact of his endeavor that are left unexplained and unsupported. For example, the Petitioner discusses “innovative construction services,” but does not explain these specific services or how they would be innovative. The Petitioner also references “sustainable building,” “new markets,” “unique products and services,” and “new and improved products” when explaining the national impact of his proposed endeavor. However, he does not specify what sustainable building techniques he would implement, new markets he would delve into, or what unique products and services or new and improved products he would introduce to the U.S. marketplace, if indeed the marketplace within which he planned to operate was sufficiently clear. Likewise, the Petitioner further stated that he would “reduce dependence on obsolete systems and technologies,” but he does not explain in detail what systems or technologies would be replaced or what new innovations would be introduced. He also asserted that he would expand private housing, commercial real estate, and industrial real estate, wide-ranging assertions in the U.S. marketplace where each of these could be considered its own field or industry, and for which he provided little explanation or support.

On appeal, the Petitioner emphasizes that his proposed endeavor would impact “key commercial segments” and “vital aspects of U.S. construction operations and productivity,” yet it is left ambiguous as to what key commercial segments and vital aspects he is referring. In sum, the Petitioner has not

sufficiently articulated his proposed endeavor, its potential prospective impact, the field in which his endeavor would have a national or global impact, nor has he submitted sufficient supporting evidence to substantiate the potential prospective impact of his endeavor. For this reason, we cannot conclude that his proposed endeavor would be of national importance. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

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. *Matter of Dhanasar*, 26 I&N Dec. at 893. Here, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond the clientele of his proposed construction consulting business. The Petitioner has not sufficiently demonstrated that his proposed endeavor would have a broad influence commensurate with national importance.

The Petitioner has also not demonstrated that the endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States. The Petitioner submitted little evidence to support how his new business would achieve his large-scale employment and revenue projections. As we have discussed at length, the actual products, services, innovations, and building techniques he claimed would be introduced to the U.S. marketplace, and to what portions of the marketplace, are left unexplained. To illustrate, the Petitioner asserts that his company would lead to "further expansion of the e-commerce sector," but he does not explain how or to what e-commerce he is referring. Likewise, the Petitioner stated that the operations of his company would "spur significant foreign direct investment (FDI) opportunities" for the United States, but again provides no explanation as to how. In addition, in his business plan, the Petitioner discusses a rapid expansion of his newly proposed business, including construction projects in Florida and opportunities, land, and investors he has already identified. The Petitioner also asserted that the new company would generate approximately \$36 million in project financing from "to be identified investors." However, again, the Petitioner did not explain or document what construction projects he planned, what land he planned to develop, or how he would generate over \$36 million in investment. As such, the Petitioner's claims that his company would generate nearly 3000 U.S. jobs and approximately \$7.6 million in revenue during its first five years of operation are not sufficiently explained or corroborated. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Therefore, the Petitioner does not sufficiently establish the benefits to the regional or national economy that would result from his undertaking such that it reaches the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, the Petitioner did not offer sufficient evidence to demonstrate that the areas where he would operate are economically depressed, he would employ a significant population of workers in these areas, or his endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish 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. Since this issue is dispositive, we decline to reach and hereby reserve the Petitioner's arguments with respect to the second and third prongs outlined in *Dhanasar*. *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).

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.

ORDER: The appeal is dismissed.