



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

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

In Re: 28793408

Date: DEC. 04, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business intelligence analyst, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) 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. *See 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 Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of a 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

## II. ANALYSIS

The Petitioner initially proposed to continue working in their field for U.S. companies as a "business intelligence analyst" serving as an "expert in data analysis" with companies in "banking and/or finances" with an aim to "progressively and positively benefit the United States business industry, and economy." by "increase[ing] sales, benefiting American economy as a whole through generation of more enterprises, more jobs and, consequently, more taxes." The Petitioner represented that their endeavor was to work as a "business intelligence analyst" to use their "knowledge and experience to collaborate to growth of middle and large sized companies through use of data structured and accurate." The record initially contained the Petitioner's personal statement styled as a "cover letter," educational credentials evaluation with degree certificate as well as certificates in SAS programming, work experience letters, awards or gifts in recognition of work performance, several letters of reference and recommendation, and various reports and articles purportedly relevant to the Petitioner's claim of eligibility for a national interest waiver.<sup>1</sup> The record developed initially at the time of filing demonstrated that the Petitioner's proposed endeavor was essentially a job search. And the purpose of a national interest waiver is not to facilitate a petitioner's U.S. job search.

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<sup>1</sup> While we may not discuss every document submitted, we have reviewed and considered each one.

The Director issued a request for evidence (RFE) for additional evidence and clarification of the Petitioner's proposed endeavor to determine its substantial merit and national importance. In response to the RFE, the Petitioner submitted a "Professional Plan," as well as a resume, revised work experience letters, a "project portfolio," and documentation from the White House and the United States Department of Commerce.<sup>2</sup>

The Director observed that the Petitioner was eligible for EB-2 classification as an individual who is a member of the professions holding an advanced degree. But the Director ultimately concluded that the Petitioner's substantially meritorious proposed endeavor did not rise to a level of national importance as required by the first prong of *Dhanasar*. The Director also determined that the Petitioner was not well positioned to advance their proposed endeavor. And the Director concluded that on balance of applicable factors, a waiver of the requirement of a job offer, and thus a labor certification, would not be beneficial to the national interest.

Although the evidentiary standard in immigration proceedings is the lowest preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *see also* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

The evidence and argument the Petitioner introduced into the record does not help them carry their burden of production and persuasion. From the outset, the Petitioner's professional plan couches their endeavor in terms of targeting their services to "SME [small and medium] companies trying to achieve better market participation." The Petitioner's professional plan advances their intention to "help the American economy" by utilizing their "knowledge and skills in [the] field of data processing, data analysis and business analyses."

To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that their proposed endeavor has both substantial merit and national importance. The first prong focuses on the specific endeavor that the individual proposes to undertake. As stated above, the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism,

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<sup>2</sup> A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc Comm'r 1998). Revisions submitted in response to an RFE constituting a materially different endeavor introduce ambiguity which prevents analysis into a proposed endeavor's substantial merit or national importance. The Petitioner's revisions here provided additional details with more information about how, when, and where the Petitioner will engage in their proposed endeavor. So the Petitioner's extensive revisions, whilst concerning, retained the character and nature of the proposed endeavor initially described by the Petitioner.

science, technology, culture, health, or education. the record supports the Director's conclusion that the Petitioner's proposed endeavor was substantially meritorious.

The Petitioner proposed their endeavor would have "create[e] jobs," "sprea[d] knowledge," "increase profits and productivity," "protec[t] SMEs," "promot[e] the data analytics culture in American companies," "protec[t] American companies from global competitors" and "promot[e] competition in the American economy." The Petitioner highlighted the COVID-19 pandemic to support the need for their business intelligence data analysis services and further highlighted the ubiquity of data analysis use by large corporations and how those principles can help small and medium corporations to improve their business profitability.

The record contains numerous documents in the form of articles from media and government publications corresponding to numerous topics in data analysis. But these relate more to the substantiality of the proposed endeavor's merit than its national importance. In determining national importance, the focus is not on the importance of the industry in which the petitioner will work or even their past success. The focus is on "the specific endeavor that the foreign national proposes to undertake."

The Petitioner expressed their proposed endeavor in three phases. Phase one contemplated the Petitioner working as "an employee or senior advisor" where they would "track customer behavioral changes," anticipate needs, and "improve revenue. " Phase two and three involved the Petitioner evolving from an employee to a consultant and expanding the reach of their endeavor small and medium companies in sectors other than "banking and/or finances" as they had expressed in their initial petition.

In *Dhanasar* we said that "we look for broader implications." See *Dhanasar*, 26 I&N Dec.at 889. And it is here that the Petitioner's proposed endeavor's deficiencies are revealed. The record does not adequately describe how the Petitioner's services would have broader implications to their field of business intelligence data analysis. That is not to say that the broader implications of the Petitioner's business intelligence data analysis services are evaluated from a geographic perspective. Broader implications are not necessarily geographically evaluated; implications within a field which demonstrate a national or even international influence of broader scale can rise to a level of national importance. But the record as it is presently constituted does not sufficiently describe how implementing any of the three phases of the proposed endeavor would implicate any broader initiatives other than a benefit to the "small and medium (SME) companies" that may engage the Petitioner's services.

For example, the record does not adequately justify how "track[ing] customer behavioral changes" broadly implicates matters in the field of business intelligence data analysis as a whole. Or in other words, it is unclear from the record how providing information on customer's behaviors for an individual business would implicate any matters in the field beyond assisting the individual business to determine the needs of their customers.

The Petitioner's employment letters, recommendation letters, and letters expressing appreciation did not reflect how the proposed endeavor implicates national importance because the letters focused on the Petitioner's past work. When evaluating the national importance of a proposed endeavor under

the first prong of *Dhanasar*, we are concerned with its potential prospective or future impact. The Petitioner's demonstration of prior similar work does not have an influence on the proposed endeavor's potential prospective impact based on its national importance.

And whilst the Petitioner anticipates their services will improve the revenue of the entities that engage them, it is not clear from the record how the improvement of one entity's revenue would have a substantial prospective positive economic effect commensurate with national importance. For example, the record does not adequately demonstrate how the improvement of revenue for one entity would create a significant potential for positive economic effects such as an increase in employment of U.S. workers particularly in an economically depressed area.

The relevant inquiry for evaluation of an endeavor's national importance is whether the prospective positive impact judged by the endeavor's broader implications or positive economic effects apply beyond just narrowly conferring the proposed endeavor's benefit. The Petitioner here has not demonstrated how conferring the benefit to the "mid-size to large enterprises" they intend to solicit have any implication or benefit rising to a level beyond them and touching matters of national importance.

### III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining arguments concerning eligibility under the 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-I*, 26 I&N Dec. 216, 526n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise eligible). So we conclude the Petitioner has not established that they are eligible for or otherwise merit a national interest waiver of the job offer requirement, and thus of a labor certification. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.