



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 29050126

Date: DEC. 07, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing specialist and entrepreneur, 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). 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, concluding that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 USCIS may, as matter

of discretion¹, 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 Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The record reflects that determination.

However, the Director found the record did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar prong. The Director further found that the Petitioner did not establish that he is well positioned to advance the proposed endeavor, and 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.² Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.³

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, 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." *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner proposes to work in the United States as the chief executive officer and marketing specialist for his two marketing consulting businesses. The Petitioner's proposed endeavor statement states, "My proposed endeavor is to take advantage of my vast experience . . . to create novel and impactful strategies for the advertising market, advertising agencies, direct customers and commercial establishments . . ." and "to create and develop projects that push the field forward in the understanding of advertising and marketing concepts." He indicates that his market consulting businesses will further his proposed endeavor.

The first business, [REDACTED] was established in 2018 in Florida by the Petitioner and another individual offering "integrated marketing consultancy to its clients with excellent growth potential in strategy development, special media projects and customer service." The business plan describes the business as a "boutique agency focusing primarily on developing business

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).

² The Director did not provide an analysis as to the findings under the second and third prongs of the Dhanasar analytical framework.

³ While we may not discuss every document submitted, we have reviewed and considered each one.

and marketing strategies and delivering highly personalized services to clients.” The Petitioner explains that the business develops and carries out marketing and digital marketing integrated with technological trends; develops, researches and creates “the integration of traditional platforms with new media, such as virtual reality . . . , augmented reality . . . , and artificial intelligence”; develops platforms for integration, interaction and immersion of users with brands; provides a “[w]orldwide network of content creation” with “the best professions for each type of work”; and implements “a system developed in the automation of communication in real time, optimizing the display of content for [the] target audience.” The business currently operates in Florida and intends to expand to clients throughout the United States.

The business plan for [REDACTED] explains that it intends to offer its technology and new media development services through the Petitioner’s second proposed business, [REDACTED]. The Petitioner intends to establish [REDACTED] with a Brazilian investment company, and it would provide virtual signs by transforming “static structures of indicative signage, such as signs for stores or shopping centers into large media equipment”; virtual icons by developing “large digital structures in large cities and consumption centers, to transform in design and entertainment icons” which “offer media experiences, immersion, interaction with brands . . . in high-traffic locations”; and virtual houses by the “digitization and volumetric capture of images in homes, warehouses, or companies for the creation of immersive content . . . for virtual tours.”

We agree with the Director that the Petitioner’s proposed endeavor has substantial merit. Even though the Petitioner’s proposed endeavor has substantial merit, the Director found that the record did not establish the national importance of the proposed endeavor. The Director stated that the record did not include evidence to support the Petitioner’s statements and projections “about the potential influence of the [P]etitioner’s proposed endeavor.” The Director reasoned that the evidence did not show his proposed endeavor would have national or global implications within his field, or its claimed benefits to the economy “would reach the level of ‘substantial positive effects’ contemplated by Dhanasar.” The Director explained that while evidence shows he is “a well-established professional in [his] field and that [he] is recognized for [his] contributions . . . , the evidence does not show that [his] contributions had broader implications, or national or global implications within a particular field.”

The Petitioner argues on appeal that the 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 contends the Director did not fully examine and consider the totality of the evidence in the record and that he submitted “an updated personal statement that contained ample arguments . . . regarding the national importance of the proposed endeavor, with each argument supported by objective, documentary evidence.” When determining his proposed endeavor’s national importance, the Petitioner argues that the Director should have considered the sufficiency of the objective, documentary evidence submitted with the initial filing and in the reply to the request for evidence, including documentation from “reputable industry and U.S. government sources . . . highlighting the vital role in economic growth of marketing, stating that marketing efforts are needed for mobilization of economic resources for additional production of ideas, goods, and services, resulting in greater employment”

He further argues that contrary to the Director noting in the denial decision that the Petitioner did not provide evidence “to corroborate the substantial positive economic impact of the proposed endeavor”, he points out that he submitted “ample documentation to corroborate the economic benefits of [his] proposed endeavor by and through the personal statements submitted with the initial petition and [the request for evidence] response.” He further notes the standard of proof is by a preponderance of the evidence and that the evidence submitted demonstrates by a preponderance of the evidence the national importance of the Petitioner’s proposed endeavor. Upon de novo review, we find the record does not demonstrate that the Petitioner’s proposed endeavor satisfies the national importance element of *Dhanasar*’s first prong, as discussed below.

The Petitioner stresses on appeal that the Director erred in not considering the totality of the evidence in the issuance of the request for evidence notice and the denial decision. He argues the request for evidence notice failed to provide an assessment of the initially submitted evidence, to clearly identify the evidence’s deficiencies, and to provide guidance for rectifying any concerns with the submitted documentation. We disagree with the Petitioner’s claims relating to the deficiencies of the Director’s request for evidence and denial decision.

Although the Director did not provide an analysis of the initial evidence in the request for evidence notice, the notice apprised the Petitioner that the initial evidence did not sufficiently show the national importance of his proposed endeavor and explained the evidence needed to establish its national importance. Also, the Director’s decision properly analyzed the Petitioner’s documentation and weighed the evidence to evaluate the Petitioner’s eligibility by a preponderance of the evidence. The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is “more likely than not” or “probably” true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989).

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. *Matter of Dhanasar*, 26 I&N Dec. at 889. The record does not demonstrate that the Petitioner’s proposed endeavor will substantially benefit the field of marketing, as contemplated by *Dhanasar*: “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *Id.* As pointed out by the Director, the Petitioner claimed that his endeavor includes “‘the development and integration of novel products and services into advertising, and the marketing industry of the nation as a whole.’” (emphasis added). However, we agree with the Director that the Petitioner did not provide “evidence to show the potential impact of his claimed ‘novel’ products and programs in the field of marketing or what the ‘novel’ programs or products would exactly entail.” Outside of the Petitioner’s general claims in his statements and in the business plan, the record does not suggest that the Petitioner’s marketing consulting businesses would impact the marketing field more broadly.

The record includes the Petitioner’s business plan for [REDACTED] which describes the business’ economic benefits to show its national importance. The business plan states,

[The business] will position itself as a marketing boutique, employing professionals who will work together towards the same goal: satisfied clients . . . [The Petitioner] will be able to contribute to the overall U.S. economy by helping companies implement effective marketing strategies. In addition to generating direct and indirect jobs and collecting taxes, the services provided by the [business] will enhance the contribution of client companies to the overall U.S. economy.

The business plan also explains the Petitioner's partial ownership of the business; the Petitioner's education and work experience; the business' products and services; an analysis of the marketing consulting industry; the significance of the marketing consulting industry; and the business' proposed marketing strategy, staffing, and financial forecasts. This business plan also generally mentions the Petitioner's experience with his other business,

However, the Petitioner has not provided corroborating evidence to support his claims that his business' activities stand to provide substantial economic benefits to Florida or the United States. The Petitioner's claims that his marketing consulting business will benefit the U.S. economy has not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide economic benefits. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376.

For instance, the business plan projects that in five years the marketing consulting business will hire nine direct employees and generate almost one hundred thousand dollars in taxes. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. While the Petitioner expresses his desire to contribute to the United States, he has not established with specific, probative evidence that his endeavor will have broader implications in his field, will have significant potential to employ U.S. workers, or will have other substantial positive economic effects in Florida or the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *id.*

Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating nine direct jobs and generating almost one hundred thousand dollars in tax revenue over a five-year period rises to the level of national importance. Also, without sufficient documentary evidence that his proposed job duties as the chief executive officer and marketing specialist for his business would impact the marketing consulting industry more broadly, rather than benefiting his consulting business and his proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The Petitioner argues on appeal that the national importance of his proposed endeavor is evidenced in industry reports and articles. The reports and articles relate to the economic benefits of marketing and advertising, and U.S. consumer spending and employment from 2007 to 2009 with projections through 2022. We recognize the importance of the marketing consulting industry, and related careers; however, merely working in the marketing consulting field or starting a marketing consulting business to support the industry is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889.

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.* 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 industry reports and articles submitted do not discuss any of the Petitioner’s claimed economic impacts specifically attributable to the Petitioner’s proposed endeavor.

The record includes recommendation letters from the Petitioner’s colleagues, business partners, and clients. The letters mainly discuss the Petitioner’s work experience, including his knowledge of business and content development, digital media, marketing, and advertising. For instance, letters from the Petitioner’s former colleagues emphasize the Petitioner’s expertise and successful implementation in the development and management of technology for media and marketing projects. The letters attest to the Petitioner’s media and marketing knowledge and his importance to the projects, the clients, and his employers. However, these documents relate to the second prong of the *Dhanasar* framework. See *id.* We acknowledge that the Petitioner provided valuable marketing services for his employers and clients in the past. However, as indicated by the Director, the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of her proposed endeavor will rise to the level of national importance, rather than only impacting his clients. The letters do not demonstrate that the Petitioner’s work will have national or global implications in the field of marketing.

The Petitioner does not demonstrate that his proposed endeavor extends beyond his business and his future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as the chief executive officer and marketing specialist of his marketing consulting businesses offers original innovations that contribute to advancements in the marketing industry or otherwise has broader implications for his field. The economic benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed business’ marketing consulting work and the claimed results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner’s proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for 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 eligibility under the second and third 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).

III. CONCLUSION

As the record does not establish that the Petitioner has met the requisite first prong of the *Dhanasar*

analytical framework, we find that the Petitioner is not eligible for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.