



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

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

In Re: 28962751

Date: DEC. 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business owner, 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree and that 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.

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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2). In addition, "profession" is defined as of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.<sup>1</sup> 8 C.F.R. § 204.5(k)(3).

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

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<sup>1</sup> 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.

the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</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

### A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner presented his “Certificate of Completion” in Logistics Technology (2011) and corresponding academic record from [redacted] in Brazil.<sup>3</sup> He also submitted his “Computer Technician” diploma (2001) and corresponding academic record from [redacted] in Brazil.<sup>4</sup> In addition, the Petitioner provided an “Evaluation of Education and Work Experience” from U-S-C-E- stating: “Considering that a Technology Degree followed by more than five years of full-time work experience in the field of Logistics Management is equivalent to a Bachelor’s degree in Logistics Management, it is my expert opinion that [the Petitioner] with a Technology degree in Logistics, and 10 years of experience, has the equivalent of a U.S. Bachelor’s degree in Logistics Management.”<sup>5</sup> This credential evaluation, however, does not indicate that the Petitioner has “a foreign equivalent degree” to either a U.S. advanced degree or a U.S. baccalaureate degree.

In denying the petition, the Director explained that the Petitioner “did not obtain a foreign degree equivalent to a U.S. baccalaureate degree. There is no provision under section 203(b)(2) of the Act which allows a [petitioner] to combine experience with education that is less than a United States baccalaureate degree or a foreign equivalent degree to equate to an advanced degree.” The Director further stated: “USCIS may only consider experience in conjunction with a United States baccalaureate degree or a foreign equivalent degree.”

On appeal, the Petitioner argues that “he is a member of the professions holding an advanced degree” based on the academic equivalency evaluation he submitted from U-S-C-E-. The regulatory language at

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<sup>2</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>3</sup> This academic record reflects two years (four semesters) of coursework (2009-2010).

<sup>4</sup> This academic record shows 14 courses taken during a three-year period (1999-2001).

<sup>5</sup> This evaluation noted that “the *Technologo* degree of two years duration” represents “attainment of a level of education comparable to up to two-years of undergraduate study in the United States.”

8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B), however, does not state that occupational experience is acceptable in lieu of a U.S. baccalaureate degree or a foreign equivalent degree. In order to have education and experience equating to an advanced degree under section 203(b)(2) of the Act, the Petitioner must have a single degree that is the “foreign equivalent degree” to a U.S. baccalaureate degree (plus five years of progressive experience in the specialty). See 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B). A United States baccalaureate degree is generally found to require four years of education. See *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg’l Comm’r 1977). There is no provision in the statute or the regulations that would allow a petitioner to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). Accordingly, the Petitioner has not demonstrated that he has “a foreign equivalent degree” to either a U.S. advanced degree or a U.S. baccalaureate degree.

Based on a de novo review, we will adopt and affirm the Director’s determination that the Petitioner has not provided sufficient evidence to demonstrate that he qualifies as a member of the professions holding an advanced degree. See *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); see also *Prado-Gonzalez v. INS*, 75 F.3d 631, 632 (11th Cir. 1996) (joining “every court of appeals that has considered this issue” holding that an appellate body may affirm the lower court’s decision for the reasons set forth therein); *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been “universally accepted by every other circuit that has squarely confronted the issue”); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give “individualized consideration” to the case). Here, the Director gave individualized consideration of the Petitioner’s arguments and evidence.

#### B. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner indicated that he intends to continue operating his company, [REDACTED] located in [REDACTED], Florida. He explained that his company “is a limited liability company created in 2016 to provide top-quality interior and exterior residential and commercial painting services.” The Petitioner further stated that [REDACTED] “seeks to provide its painting services in the city as well as to focus on the expansion of its operations to include also the residential and commercial customers demand in the greater [REDACTED]’ area. In addition, he asserts that he plans “to contribute to the advance of painting industry in the U.S. market by continuous work and expansion of my company in [REDACTED] area. By doing so, I will, consequently, create more direct and indirect employment opportunities, boost investments, increase tax revenues along with all the positive economic ripple effects.”

In addition to company formation documents and financial records, the Petitioner submitted the business plan for [REDACTED]. This business plan includes industry and market analyses, information about his company and its services, financial forecasts and projections,

marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company would employ 17 personnel, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, while his plan offers revenue projections of \$140,000 in year one, \$175,000 in year two, and \$246,750 in year three, he did not adequately explain how these sales forecasts were calculated.

The record includes information about U.S. real gross domestic product by state, migration to Florida, home sales in [REDACTED], South Florida's real estate market, the U.S. painters industry market, affordable apartments construction for seniors in Orange County, the Central Florida construction industry, advisory support programs for small and medium-size enterprises, and the benefit of the paints and coatings industry to the U.S. economy. Additionally, the Petitioner provided articles discussing White House initiatives to support small businesses, immigrant-owned businesses' effect on the U.S. economy, Brazilian immigrants in the United States, the rise in U.S. entrepreneurial activity after the pandemic, the value of small business to the U.S. economy, the worldwide paint and coatings industry, and U.S. small businesses and entrepreneurship. He also submitted information about the Distressed Communities Index (DCI), [REDACTED] mid-tier DCI score, the poverty rate in Central Florida counties, immigrant tax contributions and spending power, Latino-owned businesses in the United States, small businesses as drivers of the U.S. economy, painting industry trends, and the U.S. house painting and decorating contractors market. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

Furthermore, the Petitioner provided letters of support from J-C-, J-B-G-, J-C-2-, C-S-, and J-K- discussing his capabilities and experience in providing painting services. The Petitioner's skills, knowledge, and prior work in his field, however, 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.

The Petitioner also submitted an "Expert Opinion Letter" from Dr. V-L-, Associate Professor of Marketing at T-S-U-, in support of his national interest waiver. Dr. V-L- contends that the Petitioner's proposed work is of national importance because the generic occupation of operations manager and U.S. small businesses in general stand to contribute to our nation's economy. The issue here, however, is not the national 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." *Id.* at 889. The letter from Dr. V-L- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work operating a painting services company offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not demonstrated that his undertaking "stands to sufficiently extend beyond his organization and its clients to impact the industry or field more broadly." The Director also indicated the Petitioner had not shown that his proposed work "has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation."

In his appeal brief, the Petitioner contends that his proposed endeavor has national importance. He asserts that his evidence shows “the impact his company will cause and has already caused on the industries of painting, coating, renovation and construction including sustainable buildings and his expertise in eco-friendly use of chemicals for a green painting.” The Petitioner further states:

It is a unique cutting-edge market and how strong the impact the paint & coatings industry makes to the U.S. economy and which reaches national importance mainly through small businesses such as [REDACTED]. [The Petitioner] also showed that his proposed endeavor impacts a matter that a government entity has described as having national importance or was the subject of national initiatives such as the Proclamation on National Small Business by the White House and showed that will broadly enhance societal welfare in [REDACTED], a city in a distressed community index.

Furthermore, the Petitioner argues that he demonstrated “how [REDACTED] has grown and the company has been rendering services to big clients such as C-C-, L-P-, U-S-, V-B-, among other important ones nationally and internationally.”

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.” See *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. While the Petitioner’s statements reflect his intention to provide valuable painting services for his company’s clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of 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. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field, the commercial painting services industry, societal welfare, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown 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 demonstrated that his company’s future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, although the

Petitioner asserts that his endeavor is “generating taxes and employing people,” he has not offered sufficient evidence that his endeavor offers Florida or the United States a substantial economic benefit through employment levels, tax revenue, or business activity.

For the aforementioned reasons, the Petitioner’s proposed work 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 of the Petitioner’s appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. 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

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree. Further, 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. 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.