



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

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

In Re: 28467082

Date: DEC. 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a software developer in the information technology field, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 (1) qualifies for the underlying classification or (2) 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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 that USCIS may, as matter of discretion,¹ 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. The Petitioner’s Endeavor

The Petitioner proposes to work in the United States as an “IT Developer,” and initially described his general duties on the Form I-140 as being to research, design, develop, and test operating systems-level software, and to analyze information to determine, recommend, and plan installation of a new system or modification of an existing system. With his initial filing, he described a software application called [REDACTED] which he stated “streamline[s] the property rental process” and asserted that, upon the approval of his permanent resident status, he will “partner with property management companies and integrate their services with well-known channels including Airbnb, Booking.com, VRBO, Tripadvisor, and Expedia.”

He advised that his technology allows a rental management system to:

create . . . [a] guest profile, allowing them to communicate for the purpose of their arrival, which, in turn, increases safety and the owner’s and property manager’s ability to offer a personalized service. Property managers and owners utilize platforms to reduce manual tasks. [The Petitioner’s] software will offer features such as a bulk payment of all utility bills that help increase automation and reduce time . . . [and] also offers extra services such as mid stay cleaning for guests that utilize longer stays.

In his response to the Director’s request for evidence, he stated he would:

continue working as the Senior IT Developer for his own Florida-based IT company in the U.S., [REDACTED] providing complex, innovative IT specialized solutions to support small and medium property management businesses across the U.S., including vacation property owners and property managers, helping them overcome the challenges associated with the ever-evolving needs related to information technology while equipping them in offering non-stop service, personalized stay, an “at home” feeling, local culture experience, and guest safety, through [REDACTED] software platform. [REDACTED] has already partnered with [REDACTED] a

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).

property management company that owns over 50 vacation rental properties in Orlando, Florida, the biggest market for vacation rentals in the U.S.²

B. Substantial Merit and National Importance

Upon de novo review, we conclude the record does not demonstrate that the Petitioner's proposed endeavor satisfies the national importance element of *Dhanasar's* first prong.³ 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 Director concluded that even though the Petitioner's endeavor has substantial merit, the record did not show that the proposed endeavor is of national importance. On appeal, the Petitioner argues that the Director erred because the Petitioner has extensive experience in related areas such as service-oriented architecture, enterprise implementations, and system engineering. He asserts that his experience will contribute to the continued growth of the software development industry, and that his unique set of skills will help create innovative software products which will enhance the competitiveness of U.S. firms globally. He describes how his knowledge of "offshore development operations" can help U.S. businesses "manage and collaborate with offshore development teams more effectively" and that his "knowledge will also reduce the cost of offshore development, while ensuring the quality of the end product." The Petitioner argues that the national importance of his endeavor hinges on his extensive experience in software development and related areas, his expertise in managing offshore development operations, his proven leadership and management skills, his commitment to continuous learning and improvement; and his potential to contribute to the cultural diversity of the U.S. software development market.

Although the Petitioner's work experience and education are extensive and his commitment to continuous learning and improvement is admirable, his expertise and record of success in previous positions are considerations under *Dhanasar's* second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of his proposed work.

The Petitioner provided two opinion letters, which assert that his endeavor carries national importance because of the potential economic impact it would have on the tourism industry. While we recognize the importance of the tourism industry to the national economy, the opinions lack objectivity and do not provide the details or measurements used to support their assertions. For example, one opinion asserts that the software industry in the United States is growing, however, that fact does not relate to

² The record contains a letter dated September 2, 2022, from [REDACTED], a [REDACTED] Florida-based company explaining that in 2019, the company hired the Petitioner's company to implement [REDACTED] software. Public source information shows that [REDACTED] is a company registered to the Petitioner. See [https://www.bbb.org/us/fl/orlando/profile/\[REDACTED\]](https://www.bbb.org/us/fl/orlando/profile/[REDACTED]). Although our decision does not rest on this information, we point it out so that any future petitions filed by the Petitioner can address the business relationship between the Petitioner's company and [REDACTED].

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

how the Petitioner's endeavor is of national importance. The same opinion explains that his property management software has the potential to improve the efficiency and overall operational capabilities of companies operating in the vacation rental industry, however the opinion fails to provide specific evidence to explain how the Petitioner's specific endeavor has national importance apart from providing his potential customers with technology. In general, assertions must be supported by evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Similarly, the Petitioner provides reports from a variety of sources, such as Forbes, the Department of Labor's Bureau of Labor Statistics, BSA The Software Alliance, and the Software and Information Industry Association to explain how the software development industry is growing and vital to the U.S. economy, however none of these reports or documents explain how the Petitioner's specific endeavor of providing software technology to small and medium sized rental property management companies is of national importance.

Here, the Petitioner has not demonstrated 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. Without evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

While we acknowledge that he is an active member of the Institute of Electrical and Electronics Engineers (a professional association), neither his membership nor his continued educational pursuits establish the national importance of his proposed endeavor because it does not, for example, speak to the broader implications that his endeavor may have on the information technology field as a whole or establish any economic impact it may have. *Id.*

The Petitioner asserts that his knowledge of how offshore software development activities take place will help U.S. firms in "managing and collaborating with offshore development teams more effectively." However, his claims that his ability to assist U.S. firms wishing to engage in offshore software development operations is not congruent or consistent with his stated endeavor, and is not supported by independent, objective evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Similarly, his claim that his endeavor will "contribute to the cultural diversity of the U.S. software development market" is not supported by any objective evidence. *Id.* Thus, the Petitioner has not established how his endeavor would advance the national interest because there is an overall lack of relevant, objective, and probative evidence to support his claims.

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 specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner's stated endeavor relates to how his company will create technology and assist small and medium rental companies operating within the tourism sector. However, the record lacks evidence to document the potential impact of his specific proposed endeavor on U.S. advancement in the field of information technology. Even considering the descriptions of the Petitioner's ongoing projects and letters of work experience from companies he claims to have engaged in business, the evidence collectively and in the totality of circumstances, does not support a conclusion that his specific proposed endeavor has

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 that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clients to impact the information technology or tourism industries more broadly at a level commensurate with national importance. As required by *Dhanasar*, and as set forth above, the Petitioner has not submitted sufficient evidence to establish the broader implications of his work or that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation.

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. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. We also reserve a determination on the Petitioner's eligibility for the underlying immigrant classification as an individual of exceptional ability. 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 Petitioner has not established his endeavor meets the first prong as set forth in *Dhanasar's* 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.