



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

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

In Re: 28786560

Date: DEC. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an engineer and management consultant, seeks classification as either an advanced degree professional or as an individual 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 EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. 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 Petitioner qualifies for the EB-2 classification as an advanced degree professional but that the record did not establish that a waiver of the job offer requirement is 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 immigrant classification, as either a member of the professions holding an advanced degree 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 as either an advanced degree professional or an individual of exceptional ability, 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 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 a 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

The Director determined that the Petitioner possesses the foreign equivalent of a bachelor's degree followed by at least five years of progressive experience, and therefore qualifies as an advanced degree professional. 8 C.F.R. § 204.5(k)(2) (a U.S. bachelor's degree or the foreign equivalent degree followed by at least five years of progressive experience in the specialty is equivalent to a master's degree). As to the proposed endeavor, the Director determined that the Petitioner established only its substantial merit. The issues on appeal are whether the Petitioner has established the national importance of the proposed endeavor, whether he is well-positioned to advance it, and whether, on balance, a waiver of the job offer requirement would benefit the United States.

The Petitioner's proposed endeavor is to establish and operate a consulting, advisory, and training business based in [redacted], Texas that will specialize in advising businesses in the manufacturing and logistics industries. The Petitioner's business plan states that it will offer consulting and advisory services related operations management, including process management, supply chain management, and project development, among other topics. The business will also offer online courses in these topics for business and logistics professionals to receive additional training.

In determining that the Petitioner did not establish the national importance of the proposed endeavor, the Director concluded that the Petitioner did not demonstrate that the services that he would provide to his clients have the potential to impact the region, the nation, or the field of operations management more broadly. The Director also concluded that the record did not demonstrate that the proposed endeavor will have a significant positive impact on the U.S. economy or on job creation, or that it will broadly enhance societal welfare or cultural or artistic enrichment.

On appeal, the Petitioner emphasizes the importance of the manufacturing and logistics industries and of small businesses to the U.S. economy. The Petitioner also contends that the proposed endeavor has national importance because the company will provide economic benefits, will benefit its clients, and will offer training for professionals in the field.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant

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).

potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Upon de novo review, we agree with the Director that the evidence does not establish the national importance of the proposed endeavor. First, the Petitioner describes in detail on appeal the steps that he intends to take to establish his business. He states that he will first register the formal legal entity with the state of Texas, obtain an employer identification number from the Internal Revenue Service, obtain the necessary business licenses, and open a business bank account. The Petitioner states that he will then rent office space in the [] area and purchase furniture and equipment. The Petitioner also walks through his plans to create the business's logo and branding, to publicize the business, and to hire a marketing firm to help promote it. Although we appreciate the Petitioner's clear and detailed description of the actions that he will take to establish his business, this description does not by itself demonstrate the potential prospective impact of the proposed endeavor.

The Petitioner next emphasizes on appeal the importance of the manufacturing and logistics industries to the economy, and the relative size and importance of the Texas economy to the United States. The Petitioner describes the benefits of consulting businesses like his, asserting that his business will help manufacturing and logistics companies improve operational efficiency, improve quality, ensure workplace safety, adopt new technologies, and adapt to regulatory changes. The Petitioner claims that this "can be of significant importance to Texas, helping to improve the efficiency and competitiveness of these vital sectors of the Texan economy." While we recognize the importance of these industries and the relative size of the Texas economy, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner does not credibly explain how his proposed endeavor of operating a manufacturing and logistics consulting business stands to impact the efficiency and competitiveness of those industries on a scale that would rise to the level of national importance.

The Petitioner also asserts that the proposed endeavor has national importance based upon its potential to have significant economic effects. The Petitioner emphasizes on appeal the endeavor's potential to create jobs, pay wages and taxes, and provide valuable services to its clients. The Petitioner references on appeal the business plan, which projects that the company will employ 8 workers and earn approximately \$200,000 in profit by year 5. The business plan also projects that the company will earn approximately \$464,640 in revenue in the first year and \$960,960 by year 5.

In addition to the direct jobs and revenue that the business plan projects, the plan also claims that the business will be part of the "virtuous cycle of the market economy." This cycle is described in business plan as follows:

A firm has inbound *linkages* with the economic sectors that supply the materials needed for its production. However, it also has outbound *linkages* with the economic sectors where workers (direct employees of the inbound linkages) spend their income. Therefore, in addition to the jobs directly supported by a company, many indirect jobs can also be supported.

The business plan includes a table that lists first- and second-tier suppliers and buyers for management consulting businesses in the United States. The first-tier suppliers include office supply and computer stores, and the second-tier suppliers include computer manufacturers. The first-tier buyers include the manufacturing, retail, and insurance industries, and the second-tier buyers are “consumers in the U.S.” In an attempt to quantify this impact, the plan relies on a report from the Economic Policy Institute on “employment multipliers,” which measure the potential indirect and induced jobs that are created as a result of a business’s uses of goods and services, its output, and its payment of wages. Based upon the Economic Policy Institute’s data, the plan estimates that the company will create between 16 to 65 direct and indirect jobs in 5 years. The business plan states that this participation in the supply chain “proves that the entrepreneur’s company has a strong potential to move the American economy in different market sectors”

However, we note that there is lack of clarity and credibility in parts of the business plan. For example, the plan does not explain the source of the initial start-up funds that will be invested in the business, which the plan states will be approximately \$120,000. Additionally, although the plan provides a table of anticipated operating expenses, it does not provide a source for most of the estimated costs stated in the table. The only operating expense cost for which the plan provides a source is the payroll, which it states is based on salary information obtained from O*NET OnLine.² We also note that the table of operating expenses does not include payroll taxes. Despite this, another section the business plan estimates payroll taxes to be paid and the plan describes the payment of taxes as one of the business’s positive economic impacts. Finally, we note that the anticipated revenues appear to be based on the company immediately reaching and then fully maintaining its “service capacity,” which the plan defines as each billing employee billing for services eight hours a day for every working day of every year. But the plan does not explain why this is a credible method for estimating a new business’s anticipated revenue, particularly in the first year.

Even were we to assume that the job creation and revenue projections in the business plan are credible, the record does not establish that the impact of 8 direct jobs created and \$200,000 in revenue has the potential to provide substantial positive economic effects at a level commensurate with national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 890. Even considering the claimed indirect and induced jobs, we conclude that the Petitioner has not established the endeavor’s national importance. The Petitioner’s claim here amounts to the fact the business will be purchasing supplies and selling goods and services—as does nearly every other active business in the United States—and we disagree with the Petitioner that he has established the national importance of the proposed endeavor simply because he intends to operate a business that will participate in the economy. The Petitioner did not provide evidence to establish that the potential benefit to the economy from this business will be greater than that of other similar businesses nor that it will rise to the level of substantial positive economic effects required to establish national importance. *Id.*

Finally, the Petitioner asserts the proposed endeavor is of national importance because it will offer online courses on its website on operations management topics. The Petitioner contends that this will create a “knowledge factory” that will disseminate knowledge and “add value by transferring [the Petitioner’s] knowledge” to other professionals. The Petitioner estimates that he will train 200

² O*NET OnLine is an online database which contains occupational and salary data and is sponsored by the U.S. Department of Labor. *See* <https://www.onetonline.org/>.

participants each year. Although the Petitioner characterizes these courses as a way to disseminate knowledge through the field, we conclude that this aspect of the proposed endeavor is more like the teaching and mentoring aspect of the proposed endeavor in *Matter of Dhanasar*. There, we concluded that the petitioner’s proposal to continue teaching activities in science, technology, engineering, and mathematics (STEM) disciplines did not demonstrate national importance. *Matter of Dhanasar*, 26 I&N Dec. at 893. We concluded that while STEM teaching has substantial merit in relation to U.S. educational interests, the record did not demonstrate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly. The same is true here—the Petitioner has not established that these teaching activities have the potential to impact the field of manufacturing and logistics education more broadly. Therefore, we conclude that the Petitioner’s plan to offer online courses as one of his consulting business’s services does not establish its national importance.

Although the record reflects the Petitioner’s experience in the field and his intention to provide valuable services to his clients, the Petitioner has not offered sufficient information or evidence to demonstrate that the prospective impact of the proposed endeavor rises to the level of national importance. The Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact the manufacturing or logistics industries or the U.S. economy at a level commensurate with national importance.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We acknowledge the Petitioner’s arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner’s eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prongs. *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 the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.