



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

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

In Re: 23069327

Date: JUN. 8, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur digital marketer, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established eligibility for the underlying immigrant classification and for 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. 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, petitioners must 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if:

- 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.

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).

II. ANALYSIS

As it relates to the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. At initial filing, the Petitioner provided a “Professional Plan & Statement” reflecting:

I intend to continue using my expertise and knowledge in the areas of entrepreneurship, business management, business development, marketing management, digital marketing, innovation, strategic partnerships, music production, investments, content creation, sales, strategic planning and management, and leadership, by working as an Entrepreneur in the U.S.

....

... I would love to work with American companies looking to target Latin America, as many of these companies have entire departments that oversee marketing campaigns in these regions of the world.

My career plan in the United States is to continue working as an Entrepreneur, developing new enterprises for the North American market and generating more direct and indirect jobs through my endeavors. I intend to continue expanding, maintaining good working relationships with investors, and identifying any opportunities for cross-border investments. I have plans for future business expansion and I will continue to facilitate cross-border projects and investments between the U.S. and Brazil. I have the experience and skills to navigate lucrative business projects and my unique expertise will surely provide guidance and success in the areas of cross-border transactions and investments in Brazil.

....

If my waiver is granted, I will contribute directly to the Entrepreneurial field. Therefore, in reality, I am not competing against other U.S. entrepreneurs and business administrators since my experience lies in the aforementioned areas. I would be of great assistance in providing the much-needed demand for expert Entrepreneurs, I would also be able to help in another sector that requires my skills more.

This is of national importance to the U.S. because there is a severe shortage of professionals in my field. I can apply my knowledge to U.S. companies that depend on these strategies to grow and build their products and companies. By employing my knowledge of entrepreneurship, business management, business development, marketing management, digital marketing, innovation, strategic partnerships, music production, investments, content creation, sales, strategic planning and management, and leadership, I will most assuredly continue to advance as an Entrepreneur in the U.S.

In response to the Director's request for evidence (RFE), the Petitioner's cover letter stated that "[s]ince the filing of the case, the Petitioner has developed his endeavor, which has culminated in the creation of a business plan for a US company, [REDACTED] (d/b/a State of Art Education)" and submitted a business plan, dated after the issuance of the Director's RFE.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner maintains:

... [He] proposes to work in sectors of great importance and fast growth for the United States. In addition to generating revenues within the country and creating employment opportunities, as an entrepreneur, the Petitioner's company will also contribute to industry revenue growth. The Petitioner, through his company in the U.S., will play a critical role in preparing digital marketing professionals including social media marketing strategist, SEO (Search Engine Optimization) experts, ad specialist, content marketing professionals and internet technicians for their future career, in order to meet the increasing talent demand in this industry. His knowledge of the latest industry trends, technologies, and methodologies is currently in high demand and as such, would provide crucial to the success of many business seeking professionals with the Petitioner's exceptional background and well-rounded skills

At the outset, the Petitioner initially claimed to work as an entrepreneur "to work with American companies looking to target Latin America" without any mention of owning and operating [REDACTED] [REDACTED]. In fact, the Petitioner developed the business plan after the Director issued the RFE. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of opening and operating [REDACTED]

In 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." *See Dhanasar*, 26 I&N Dec. at 889. Although he stresses the importance of entrepreneurship, including the submission of industry articles relating to marketing and the economy, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing his particular services rather than the importance of entrepreneurs and marketing. 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. We note here the Petitioner's claim of a professional shortage does not render his proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner emphasizes his experience, skills, and abilities. The Petitioner's personal knowledge and other attributes 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.

Moreover, 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. The Petitioner did not offer specific information and evidence to corroborate his assertions that the prospective impact of working as an entrepreneur for American companies 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, the record does not show through supporting documentation how his specific entrepreneurial services stand to sufficiently extend beyond his prospective clients or companies that may utilize his services, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not demonstrate how his initial proposed endeavor 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 attributable to his future work, the record does not show any benefits to the U.S. regional or national economy resulting from his entrepreneur position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

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 either a member of the professions holding an advanced degree or as an individual of exceptional ability.²

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility 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.

² See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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).