



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

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

In Re: 27188531

Date: JUN. 23, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a sales professional, seeks second preference 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 immigrant 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 qualified for classification as a member of the professions holding an advanced degree, but 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. 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 as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates that:

¹ *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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. *Dhanasar*, 26 I&N Dec. at 889.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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. *Id.* at 890-91.

II. ANALYSIS

A. Eligibility for the Underlying Visa Classification

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The Petitioner initially applied as an individual of exceptional ability and submitted documents to meet three of the six criteria pursuant to 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), but the Director did not make a finding on whether the Petitioner meets the EB-2 classification under the exceptional ability criteria. Instead, the Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree without further analysis.

The Petitioner submitted a diploma indicating that he earned a bachelor's degree in production engineering from the Universidade [REDACTED] in Brazil along with academic transcripts from 2014 to 2016. The Petitioner also presented a certificate of "MBA in Commercial Management" from [REDACTED] and academic transcripts from November 2016 to February 2019. The record, however, does not contain an academic credentials evaluation to establish his foreign degrees' equivalency to a United States advanced degree as required under 8 C.F.R.

§ 204.5(k)(3)(i)(A). Thus, we find that the Petitioner has not documented his qualifications as an advanced degree professional.

Furthermore, even if he had demonstrated his qualifications for the underlying visa classification as either an advanced degree professional or an individual of exceptional ability, he has not established eligibility for a national interest waiver as explained below. Therefore, we decline to reach and hereby reserve finding of his eligibility under the exceptional ability criteria pursuant to 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) as it would serve no meaningful purpose.

B. National Interest Waiver

The Director concluded that the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. Specifically, the Director determined that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

In the initial filing, the Petitioner submitted his professional plan and statement and described his proposed endeavor as follows: “[m]y career plan in the United States is to continue working with American companies that require my specialized knowledge, years of experience, and significant expertise working in the manufacturing, energy management, and automation by working as a Sales Manager in the United States.” The Petitioner then submitted letters of support discussing his past accomplishments and industry reports addressing importance of sales profession and talent shortage in the field.

The Director issued a request for evidence (RFE) asking the Petitioner to provide further information and evidence regarding his proposed endeavor and its national importance. In response, the Petitioner indicated that he “intends to continue his career as a Sales Manager” to “enhance the revenue of U.S. companies,” “improve the U.S. business sphere,” “help U.S. companies expand their business operations into Latin American markets,” “provide significant sales growth potential for U.S. companies,” and “ultimately impact the productivity of the U.S. business ecosystem and national economic activities.”

At the same time, the Petitioner submitted a revised statement that lays out his endeavor to “create jobs and a profitable market” with his own company, [REDACTED]. The Petitioner stated that his “full-service consulting, project management, and installation company” will operate in the state of Florida and he intends to serve as the company’s Chief Executive Officer (CEO) to “focus on managing, overseeing cable and pipeline installation projects, including providing schedules, cost estimates, and labor force.”

In the decision denying the petition, the Director determined that while the Petitioner’s proposed work has substantial merit, he had not demonstrated the national importance of his proposed endeavor. The Director concluded that the Petitioner had not shown that his undertaking stands to have broader implications, or national or global implications, within a particular field or reach the level of “substantial positive economic effects.” *Dhanasar*, 26 I&N Dec. at 890.

On appeal, the Petitioner contends that he has demonstrated the national importance of his proposed endeavor under the preponderance of evidence standard and that the Director's decision was in error because it imposed a "stricter standard of proof."

With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his 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.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director analyzed the Petitioner's documentation and weighed his evidence to evaluate whether he had demonstrated, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework.

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. Here, the nature of the Petitioner's proposed endeavor is unclear. The Petitioner's initial filing included generalized statements regarding his occupation as a sales manager and his intention to work for U.S. companies in "manufacturing, energy management, and automation" sector. The information he provided in response to the Director's RFE did not clarify or provide more specificity to his initially described proposed endeavor. Instead, the Petitioner expanded his proposed endeavor to include working as an entrepreneur and CEO of his own company and his intention to provide business consulting services and oversee cable and pipeline installation projects. With the appeal, the Petitioner reverts to the original proposed endeavor but emphasizes that he will work "especially as a Sales Professional in the field of telecommunication and utilities."

Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. Here, the Petitioner's varying statements and claims obscure the focus of his work and the nature of his proposed endeavor. While the Petitioner's initial statements reflect his intention to seek direct employment with U.S. companies as a sales manager, his revised statements indicate that he will also run his own company. We do not know if the Petitioner intends to perform both functions he describes or he will only perform the first job that he secures. In addition, we have little clarity on what type of sales manager position he is seeking as he has mentioned various types of companies that holds his interest, including manufacturing, energy management, telecommunication, to name a few. Therefore, we conclude that the Petitioner has not provided a specific or consistent proposed endeavor activity such that we can determine its substantial merit and national importance as defined by *Dhanasar*. The Petitioner must resolve ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Petitioner claims on appeal national importance of his proposed endeavor based on industry reports and articles addressing talent shortage and increased demand for sales professionals in the field. The record also includes other articles addressing the overall value and outlook on sales professionals and sales industry. Although we recognize the importance of the sales industry and career, merely working in an important field 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.” See *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.*

The Petitioner does not show through supporting documentation how providing services as a sales manager stands to sufficiently extend beyond his employer to broadly impact the industry or the U.S. economy. 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. The record does not show that either of the Petitioner’s proposed endeavors stands to sufficiently extend beyond his employers or clients to whom he may lend his expertise, to impact the U.S. economy at a level commensurate with national importance.

The Petitioner states that his proposed endeavor “is clearly of national importance when considering how much a professional with his [sic] caliber can contribute to the U.S. economy.” The Petitioner claims that his years of experience in sales management demonstrate that his proposed endeavor will have national or even global implications in the field. Although the record contains recommendation letters from the Petitioner’s former co-workers discussing his successful managerial skills, sale strategies, and business projects, these letters do not address the specifics of the Petitioner’s proposed endeavor or how his endeavor will substantially benefit the U.S. business or sales industry, 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.* at 889. The record simply does not provide specific evidence pointing to how the Petitioner’s proposed endeavor will significantly impact the sales industry or how his skills differ from or improve upon those already available and in use in the United States.

In *Dhanasar*, 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. In response to RFE, the Petitioner introduced a business plan for [REDACTED] and claimed that his business will have total payroll expenses of 1,239,038 million dollars and generate about 21 jobs for U.S. workers in a total of five years. The Petitioner contends that his company will “boost local economies, specifically in the underserved business zones, of several states across the United States” and “has the potential to attract investments and expand throughout the United States in the following years.”

However, the business plan does not sufficiently detail the basis for its financial and staffing projections, nor does it adequately explain how these projections will be realized. In addition, the Petitioner does not offer corroborating evidence that the area where his company operates is economically depressed, or that he would employ a significant population of workers in that area. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

With the appeal, the Petitioner does not make any additional claims about this entrepreneurial endeavor or submit other documentary evidence to bolster his prior assertions about the overall impact of his services as a sales professional would have on the U.S. economy. We conclude that the record does not demonstrate that either of his proposed endeavor extends beyond his future clients or

employers, to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. The economic benefits that the Petitioner claimed depend on numerous factors and the Petitioner did not offer a sufficiently direct evidentiary tie between his sales work and the claimed results.

Based on the foregoing, we find that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner's 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 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.

ORDER: The appeal is dismissed.