



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

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

In Re: 26400082

Date: JUNE 23, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, 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 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.

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. 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 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:

- The proposed endeavor has both substantial merit and national importance;

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).

- 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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. 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 initially indicated that he intends “to work as an entrepreneur in the field of information technology (IT) consulting . . . through the development of tech and cybersecurity projects.” He asserted that he plans to expand his company, D-I-A-C-, and to offer “IT consulting services for small and medium-sized businesses (SMEs) in the United States.” In response to the Director’s request for evidence (RFE), the Petitioner stated: “I intend to continue using my expertise and knowledge in the areas of IT audit, IT consulting, IT operations management, cybersecurity, business process improvement, business continuity, governance risk and compliance, C-suite and board advisory, team management, and leadership to work as an entrepreneur in the field of information technology.” He further explained that D-I-A-C- “will operate as a consulting company providing services to SMEs, helping them build a solid IT infrastructure, secured by intelligent monitoring and risk management, which will support their business growth.” The Petitioner added that his company’s “portfolio of services will enable customers to strengthen, secure, and expand their operations, turning their businesses truly global. Finally, the company will also help them to optimize their IT processes, save costs, and maximize profitability.”

The Petitioner submitted the business plan for D-I-A-C-. 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 work experience, and a description of company personnel. Regarding future staffing, the Petitioner’s business plan anticipated that his company would employ 11 personnel in year one, 20 in year two, 38 in year three, 70 in year four, and 116 in year five, 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 \$724,500 in year one, \$2,720,000 in year two, \$6,365,000 in year three, \$12,016,000 in year four, and \$23,650,000 in year five, he did not adequately explain how these sales forecasts were calculated.

The record includes information about the occupational outlook for top executives, foreign direct investment in the United States, immigrant entrepreneurship and U.S. immigration policy, immigrants as contributors to economic growth after the COVID-19 pandemic, the U.S. IT consulting industry, Biden Administration initiatives to promote immigrant entrepreneurship, global skilled labor shortages, the challenges of agile software development, the effect of technological change on business activity, the value of IT in the business sector, the U.S. STEM worker shortage, the value of highly skilled immigrants to the U.S. economy, the U.S. foreign-born population, global labor skills shortages, the role of entrepreneurship in U.S. job creation and economic development, and business operations investment. In addition, the Petitioner provided articles discussing immigrant entrepreneurs as drivers of economic growth, the software and information technology industry in the

United States, business owners' feedback on immigrant entrepreneurship in America, the role of technology in business, immigrants' positive effect on the business community and U.S. economy, the benefits of population growth, the rise of augmented reality (AR) in retail, the use of AR systems in fighting COVID-19, the value of software development, IT budgets and technology trends, the benefits of using a mobile app to reach customers, the talent shortage of software developers, foreign-born entrepreneurs as drivers of American innovation, the outlook for the IT industry, the role of entrepreneurs in the Biden Administration's recovery plan, cyberthreat defense, and cyber attacks on critical infrastructure and business operations. He also submitted information about the COVID-19 pandemic's effect on the business environment, the value of entrepreneurship, immigrants' contribution to the U.S. economy, cultivating a new generation of innovators, immigrants as drivers of entrepreneurship and innovation, the positive economic benefits of immigration, the value of operations management in business organizations, U.S. Department of Justice prioritization of ransomware attack investigations, the Transportation Security Administration's cybersecurity oversight, software development after COVID-19, the U.S. shortage of IT workers, the contribution of immigrant-launched businesses, the entrepreneurial legacy of immigrants and their children, the value of entrepreneurship in forging economic success, and the Biden Administration's initiatives to improve U.S. cybersecurity. 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 C-W-, D-O-, E-D-, O-A-, and T-P- discussing his IT capabilities and experience. 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 B-W-, a professor of computer science and cyber security at G-F-U-, in support of his national interest waiver. B-W- contends that the Petitioner's proposed work is of national importance because his generic occupation of IT consultant and the industry in which he works stand to contribute to our nation's economic growth and security. 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 B-W- 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 an IT services consulting 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 have a "broader impact in the field of Information Technology at a level commensurate with national importance." The Director also indicated the Petitioner had not shown that his proposed work will offer "substantial positive economic benefits."

In his appeal brief, the Petitioner points to his "nineteen (19) years of progressive experience in the information technology field," as well as his Bachelor's degree in Business Administration and Master's degree in Management Information Systems. Again, the Petitioner's education, skills, knowledge, and

experience in his field 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 argues that there is a “steep shortage in the U.S. of professionals” in the IT field. We are not persuaded by the Petitioner’s claim that his proposed endeavor has national importance due to the shortage of professionals in his industry. Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner contends that his undertaking “can promote important social and economic benefits for the nation immediately” and progressively affects “the United States’ business industry, its economy, and the domestic job market.” The Petitioner asserts that his proposed work “will improve the United States’ business sphere, and further position the nation as a business hub within the global economy. He will also create jobs and generate tax revenue through his U.S. based company.” The Petitioner further argues that his proposed endeavor offers “significant sales growth potential and significant employment opportunities for the nation, which will ultimately impact the productivity of the U.S. business ecosystem, as well as national economic activities.” He also claims that his undertaking will “contribute to tax revenue, and ultimately help increase the flow of money in the U.S. on a national level, which will contribute to an enhanced U.S. gross domestic product (GDP).”

Furthermore, the Petitioner argues that his proposed work will “benefit the U.S. economy by improving business actions, generating more revenue, and contributing to the generation of jobs in the country.” He claims that his undertaking “will serve U.S. interests and economic initiatives by enhancing the nation’s financial landscape and consequently streamlining the business ecosystem.” Additionally, the Petitioner asserts that his endeavor “will be beneficial to the financial and business industries in the U.S., and to its economy as a whole.” He also contends that his proposed services “to U.S. companies and organizations will drive results, improve productivity, and support the U.S. economy.”

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 IT consulting 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 future company and its clientele to impact the IT consulting industry, the cybersecurity field, 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 [redacted] or any other municipality the United States.² 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 has asserted that his endeavor will generate "jobs in the country," he has not offered sufficient evidence that the areas where his company will operate are economically depressed, that he would employ a significant population of workers in those areas, or that his endeavor would offer the regions or their population 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 third prong 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

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.

² The Petitioner's business plan states that he "will establish the initial base of [his] company in [redacted] MD" and later expand beyond that location. The business plan incorrectly states that "[redacted] is a city located in [redacted], [redacted] Maryland. It is also the county seat of [redacted]" As a governmental unit, [redacted] separated from [redacted] in 1851. Furthermore, [redacted] is the county seat of [redacted] These errors raise questions regarding the plausibility of the Petitioner's business plan.