



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

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

In Re: 24808335

Date: MAR. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in business development and technology, 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 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 did not establish that a waiver of the classification's job offer requirement would be in the national interest. The Director dismissed a subsequent combined motion to reopen and reconsider the decision. 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, 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 discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

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 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 was a member of the professions holding an advanced degree.² The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner has 12 years of experience in business and technology. After working for three years as a media assistant in advertising and communications he founded and led his own company in Brazil, providing “Internet intelligent tools and solutions for promotional and advertising campaigns, applications for discount coupons, websites, and commercial disaster recovery sites.” In 2015 he founded his U.S. company, [REDACTED] which provides digital solutions for property management companies. The Petitioner states that his company created and developed two key technologies – a virtual concierge system (identified as [REDACTED]), and a property management system (identified as [REDACTED]) to facilitate the operational and commercial work of vacation home management companies in the U.S.

The Petitioner also states that he intends to work as an entrepreneur in the U.S. and expand his company. He asserts that he will “help U.S. companies seize new market and investment opportunities [that will]:

- Generate U.S. tax revenue and create jobs for Americans;
- Create and implement new tools to optimize internal processes of companies;
- Facilitate cross-border transaction, negotiations, and partnerships between companies in the U.S., Brazil, and Latin America;
- Strategically manage and secure strategic partnerships for U.S. companies to increase revenues, especially in the technology sector;
- Offer expertise and advice to U.S. companies in the technology sector that are operating or seeking to do business in Brazil and Latin America.

With the initial filing the Petitioner submitted evidence of his education and experience, a personal statement describing his proposed endeavor and claimed eligibility for a national interest waiver, recommendation and support letters, an expert opinion letter, and his Brazilian tax records. He also submitted industry reports and articles discussing the benefits of entrepreneurship and the important role of immigrant entrepreneurs in the U.S. economy.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest

² The record demonstrates that the Petitioner holds the equivalent of a U.S. bachelor’s degree in communications and advertising earned in 2004, followed by more than five years of progressive experience in technology project management and process improvement. See 8 C.F.R. § 204.5(k)(3)(i)(B).

waiver. The Director determined that the Petitioner had not established that the proposed endeavor was of national importance, that he was well positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

The Petitioner's response to the RFE includes an updated personal statement, a detailed business plan dated November 2021, and copies of software licensing agreements between the Petitioner's company and its clients. He also submitted additional recommendation letters, and additional articles discussing the role of immigrants in the U.S. economy and the impact of the COVID-19 pandemic on small businesses. In his updated personal statement, the Petitioner further describes his proposed endeavor as follows:

I intend to continue using my expertise and knowledge, gained through my vast years of experience, to serve as an Entrepreneur at [REDACTED]. The company will operate in Florida for a variety of businesses, especially those demanding solutions and services related to real estate and property management. I will pursue my endeavor by leveraging my years of business experience and I will generate jobs for U.S. workers, as well as create continuous, significant, and profitable opportunities for the national economy.

The Petitioner's business plan anticipates that the company will employ six employees in its first year, and 11 by its fifth year. The plan states that the total payroll expenses will increase from \$271,300 to \$529,148 over five years. Regarding financial predictions, the Petitioner's business plan predicts total sales of \$959,700 in its first year, increasing to over \$2 million by its fifth year.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had established that he is well positioned to advance his proposed endeavor. However, he concluded that the Petitioner had not demonstrated that his proposed endeavor had national importance or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Director stated that the Petitioner's field of endeavor was unclear because the initial description of his proposed endeavor as "business development and technology" was inconsistent with the response to the RFE, where the Petitioner described his endeavor as providing "solutions and services related to real estate and property management." The Director further stated that the record did not demonstrate that the Petitioner's business will have a regional or national impact at a level consistent with having national importance, or that the Petitioner's work will have broader implications in his field of endeavor. Additionally, the Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of his prospective contributions to the United States, an urgent national interest in his contributions, the potential creation of jobs, or that his self-employment does not adversely affect U.S. workers.

The Petitioner filed a Motion to Reopen and Motion to Reconsider the Director's decision. On motion, the Petitioner asserted that the Director incorrectly applied USCIS policy and did not consider evidence in the record. The Petitioner also submitted "new evidence not sent previously to USCIS at the time of filing, October 2019, or when answering the RFE in December 2021, including a new business plan dated May 2022. The Petitioner noted that the new evidence was submitted on motion

following an update to the USCIS Policy Manual in January 2022, which the Director did not consider in his March 2022 decision.³

The Director dismissed the Petitioner's combined motions. The Director specifically noted that income tax records for the Petitioner's business reflected gross receipts of only \$8,598 in 2018, which did not establish that his business will have a regional or national impact at a level consistent with having national importance. The Director further stated that "any evidence dated after the filing date cannot be considered in this case" and declined to consider additional tax records filed after the October 2019 filing date.

On appeal, the Petitioner again asserts that the Director did not properly apply USCIS policy and made legal and factual errors, including in failing to consider all evidence in the record supporting his eligibility for a national interest waiver.

A. Substantial Merit and National Importance

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 did not state that the Petitioner's proposed endeavor had substantial merit in the RFE, in the denial of the petition, or in the dismissal of the Petitioner's combined motions. As noted above, the record includes information about the economic value of entrepreneurship and the importance of immigrant contributions to the U.S. economy, including articles and an expert opinion letter. As the Petitioner has demonstrated that his proposed endeavor involves entrepreneurialism in both business and technology, we conclude that the proposed endeavor here has substantial merit.

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 Id.* 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.

Although STEM fields are important and may be the subject of national initiatives, this does not necessarily establish the national importance of the Petitioner's specific proposed endeavor. 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 "the specific endeavor that the

³ On January 21, 2022, USCIS issued a policy alert updating guidance in the USCIS Policy Manual to address requests for national interest waivers for advanced degree professionals or persons of exceptional ability. The guidance clarified how the national interest waiver can be used by science, technology, engineering, and mathematics (STEM) graduates and entrepreneurs. *See* 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

foreign national proposes to undertake.” *See id.* at 889. Here, much of the Petitioner’s evidence relates to the importance of the entrepreneurialism and technology, rather than his specific proposed endeavor. Even considering the articles, reports, and statistics collectively and in the totality of circumstances, we conclude that they do not support a finding that his specific proposed endeavor has national importance.

The record includes an expert opinion letter from [redacted] Professor and Chairperson of the Department of Business Management of the [redacted] School of Business, [redacted] College of the City University [redacted]. In discussing the national importance of the Petitioner’s proposed endeavor, [redacted] states, “U.S. companies doing business or planning to do business in Brazil would benefit from the expertise and skills of an Entrepreneur and a Business Manager, such as [the Petitioner] with an extensive knowledge of the Business Environment and regulatory landscape in Brazil.” USCIS may, in its discretion, use opinion statements submitted by the Petitioner as advisory. However, we may give an opinion less weight if it is not in accord with other information in the record. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). Although the Petitioner’s initial professional plan stated his intent to “facilitate cross-border transactions, negotiations, and partnerships between companies in the U.S. Brazil, and Latin America,” and to “offer expertise and advice to U.S. companies in the technology sector that are operating or seeking to do business in Brazil and Latin America,” these key elements of the Petitioner’s proposed endeavor are not discussed in his personal statement submitted in response to the RFE or in either of the business plans in the record. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We also note that the five software license agreements in the record do not support the claimed global reach of the Petitioner’s proposed endeavor. These agreements, allowing clients of the Petitioner’s company use of the [redacted] technology for vacation rental property management, are with businesses based solely in the [redacted] area of Florida.

Both the Petitioner’s November 2021 and May 2022 business plans include 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 qualifications, and a description of company personnel. Regarding future staffing, the Petitioner did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, while his plan offers sales projections of \$2 million in five years, he did not adequately explain how these sales forecasts were calculated. The Petitioner’s business was registered in Florida in 2015 and has been operating for more than seven years. On motion the Petitioner provided the company’s income tax returns for 2018 to 2021. We note that the tax returns in the record do not support the predictions in the Petitioner’s business plans with respect to staffing and sales. Rather, the tax returns reflect the following figures:

Year	Gross Receipts or Sales	Salaries and Wages
2018	\$8,598	\$0
2019	\$22,625	\$0
2020	\$69,897	\$0
2021	\$181,116	\$6,211

Furthermore, 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. Specifically, he has not shown that his U.S. company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the sales forecast for [REDACTED] indicates that his company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. In addition, although the Petitioner asserts that his company will hire U.S. employees, he has not offered sufficient evidence that the area where [REDACTED] operates is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. And, as exhibited above by the Petitioner's tax returns, the operational company has not demonstrated employment of U.S. workers. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework related to national importance.

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 business development and technology services for his company's clients, we agree with the Director that 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 record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

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 third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.⁴

ORDER: The appeal is dismissed.

⁴ As noted above, the Director determined that the Petitioner had satisfied the second prong of the *Dhanasar* framework, that he was well-positioned to advance his proposed endeavor. Because we conclude that the Petitioner has not established the national importance of his proposed endeavor as required by the first *Dhanasar* prong, which is dispositive of the appeal, it is unnecessary to analyze any remaining independent grounds. Therefore, we decline to reach but hereby reserve remaining arguments concerning eligibility under the second and third *Dhanasar* prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); 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).