



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

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

In Re: 26379393

Date: MAY 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner describes himself as a professional expert in social marketing, or an international marketer and financial advisor. The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 record did not establish that Petitioner is a member of the professions holding an advanced degree or that he qualifies for a national interest waiver. 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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.¹ 8 C.F.R. § 204.5(k)(3).

¹ Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of duties performed by the individual or of the training received. 8 C.F.R. § 204.5(g)(1).

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 USCIS may, as matter of discretion,² 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.³

II. ADVANCED DEGREE

The Petitioner claims to qualify for the EB-2 classification based on having received the foreign equivalent of a U.S. bachelor’s degree and at least five years of progressive post-baccalaureate experience in the specialty. The record includes evidence that the Petitioner received degrees from three two-year programs from the [REDACTED] in Columbia: Associate in Science in International Marketing Processes, Associate in Science in International Marketing Management, and Bachelor of Business Administration in International Marketing. An educational evaluation in the record equates the Petitioner’s foreign education to a Bachelor of Business Administration in International Marketing received in the United States. In reviewing whether the Petitioner had attained an advanced degree, the Director determined that the Petitioner did not establish that he meets EB-2 eligibility requirements, stating that the record showed that the Petitioner’s work experience letters did not describe his job duties and that the letters all referenced work experience prior to his attainment of his baccalaureate-equivalent degree; he concluded that the Petitioner had not established that he qualifies for the classification.

On appeal, the Petitioner reiterates that the evidence of his education and work experience is sufficient to establish that he is a member of the professions holding an advanced degree. Upon review of the record, we agree with the Director’s conclusion. The Petitioner submitted evidence to demonstrate relevant work experience prior to completion of his baccalaureate. In addition, the work experience letters are certifications of the Petitioner’s previous employment; they do not include descriptions of the Petitioner’s job duties to demonstrate five years of progressive experience in the specialty. 8 C.F.R. §§ 204.5(k)(2), (g)(1). Further, we conclude that the record does not include evidence to demonstrate that the Petitioner’s intended occupation is a profession requiring the attainment of at least a baccalaureate degree for entry. 8 C.F.R. § 204.5(k)(3). The Petitioner has not established eligibility for the EB-2 classification as a member of the professions holding an advanced degree.

² 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).

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

III. NATIONAL INTEREST WAIVER

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. *Dhanasar*, 26 I&N Dec. at 889.

A. National Importance

The Director concluded that while the Petitioner's proposed endeavor has substantial merit, the record did not establish its national importance. The Petitioner initially provided a report from the Census Bureau discussing income, poverty, and health insurance in the United States, as well as articles discussing unemployment and other statistics among Hispanic populations. The Petitioner described his intention to embark on a "social marketing campaign that will affect the Latin American community as a whole in the United States." He further described his proposed endeavor as follows (quoted as written):

[REDACTED] endeavor will strengthen the efforts deployed by several Nongovernment organizations and Social Groups in different counties, cities, professional associations, private or public organizations in the United States. He will be encouraging through social marketing strategies oriented to influence the eradication of multiple of multiple social problematics which will seek to educate minorities about these unattended matters.

After review of the record, including a professional plan submitted in response to a request for evidence (RFE), the Director determined that the record did not contain objective evidence to support the Petitioner's assertions. He determined that the record does not demonstrate the endeavor's national importance; the Director stated that it appeared that the prospective impact would be localized to the prospective customers in the local community. The Director concluded that the evidence did not show that the proposed endeavor would impact the industry more broadly or sufficiently extend beyond the organization and its clients to show national or global implications.

On appeal, the Petitioner submits a brief reasserting that the record demonstrates that he is qualified for the EB-2 classification and that his proposed endeavor is of national importance. The Petitioner contends the Director applied a stricter and higher standard of proof than that of preponderance of the evidence⁴ and disregarded the evidence submitted. The Petitioner's brief repeats much of the description provided prior to his RFE response, including his assertion that his "social marketing campaign will affect the Latin American community as a whole."

Upon review of the record, we agree with the Director's decision concerning the national importance of the Petitioner's proposed endeavor. In determining national importance, the relevant question is

⁴ See *INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

The Petitioner has not provided sufficient documentation to demonstrate that his proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States. *Id.* 890. The Petitioner’s professional plan provides general descriptions of social marketing theories and multi-level marketing models. The plan does not contain specifics regarding forecasts for his specific business, which, according to the plan, appears to be that of a distributor of products offered by [redacted] through a company called [redacted] the plan states that in 2021, the Petitioner “started as an independent contractor and Authorized Distributor for [redacted] products. [redacted] finances the sales of the [redacted] product line and pays our Authorized Distributors from the financing of their orders.” The marketing descriptions in the plan indicate that the Petitioner will be recruiting and training individuals to sell [redacted] products. He has not provided data or studies establishing how his proposed endeavor will impact Latin American communities in the region in which his business operates or elsewhere in the United States. He has not provided evidence of similar successful business models or other comparable examples to demonstrate the potential broader implications of his proposal.

The Petitioner states that “he is qualified to instruct and apply his social marketing and advertising techniques to other professionals, corporations, and for-profit and none-profit, public, and private organizations in the United States.” 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. Similarly, the record here does not establish that the Petitioner’s role as a social marketing advisor would have an impact on populations other than an indeterminant number of individual clients. In addition, it is unclear whether that impact would be positive, as the Petitioner has not provided information concerning any implications following his acquisition of recruits, for whom the business model indicates there is not necessarily any guaranteed income or benefit. We conclude that the Petitioner has not established the national importance of his proposed endeavor.

B. Substantial Merit

In response to the RFE, the Petitioner submitted a professional plan for a business he intends to operate that “will represent several consumer or mass distribution brands, such as [redacted]” and that its clients will be “General Public – Consumers, Entrepreneurs, Junior Dealers.” The plan depicts [redacted] as the business’s “Consulting Unit” and its “Main Customer,” and describes [redacted] and his involvement with the brand as follows (quoted as written):

Based on his extraordinary professional experience as a marketing strategist, [redacted] achieved the representation and authorized distribution of the [redacted] brand. [redacted] offers cookware of the highest quality. Provides

customer service and marketing support to 5,000 Authorized Independent Distributors in the United States, Canada, Mexico, Argentina, Brazil, Columbia, and Peru, among others.

The plan also describes the concept of multi-level marketing:

The term...(MLM) refers to a strategy used by some direct sales companies to sell products and services. MLM encourages existing members to promote and sell their offerings to other individuals and bring on new recruits into the business. Distributors are paid a percentage of their recruits' sales. New recruits become the distributors network or downline and are, in turn, encouraged to make sales to earn money.... Multi-level marketing companies use people instead of retail outlets to sell their products to customers.... [D]istributors are not employees of the company. Instead, they're individual business owners who recruit their own distributor networks to help them sell products. Multi-level marketing firms rely upon this extended network of independent distributors to generate revenue.

The plan further states, "In this way, the company will generate opportunities and sources of work for people who wish to formally join the projects and contracted consultancies."

The Petitioner asserted that his services will aid Latin American populations in the United States. However, he has not provided documentation to demonstrate how his company's promotion of multi-level marketing arrangements to potential distributors will benefit these populations. Although the Director determined that the Petitioner's proposed endeavor has substantial merit, based on the evidence of record, we cannot determine the merit of the Petitioner's proposed endeavor. We therefore withdraw the Director's finding to the contrary. We conclude that the Petitioner has not established that his proposed endeavor has substantial merit.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, nor does it establish that the endeavor has substantial merit. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified basis for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); 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

The Petitioner has not established his eligibility for the EB-2 classification, nor has he met the requisite first prong of the *Dhanasar* analytical framework. We conclude that he has not established he is eligible for or otherwise warrants a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.