



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

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

In Re: 28805562

Date: NOV. 2, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a sales manager, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts or business. *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. 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 the Petitioner qualifies for the 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

To qualify for a national interest waiver, a petitioner must first show eligibility 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 EB-2 eligibility, 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,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 qualifies for classification as a member of the professions with an advanced degree because his baccalaureate degree and subsequent experience are equivalent to a master's degree under 8 C.F.R. § 204.5(k)(2). Discussion of the Petitioner's parallel claim of exceptional ability is moot.

The issue before us 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. The Director determined that the Petitioner had established the substantial merit of the proposed endeavor, but not its national importance. The Director also concluded that the Petitioner had not met the second and third prongs of the *Dhanasar* national interest framework.

After earning a bachelor's degree in business administration in 2001, the Petitioner worked in Brazil in lower sales positions for a telecommunications company from 2000 to 2005, and then as a sales manager for an appliance manufacturer from 2005 to 2006, and for a computer company from 2007 to 2014. The Petitioner entered the United States as an F-1 nonimmigrant student in 2014, and was general manager and co-owner of a food company in Florida from 2014 to July 2019. He has since worked as a territory manager for software companies in the United States.

The Petitioner stated that he "intend[s] to work in the United States as a sales manager" for information technology (IT) companies. He listed eight activities that he would perform "as an IT sales manager":

- Execute and manage B2B (Business to Business) sales, aiming to exceed targets.
- Lead and coach sales teams with the goal of promoting best practices in sales and opportunity management.
- Coordinate sales activities and plan sales and new customer acquisition strategies.
- Understanding customer needs and providing the necessary solutions.
- To offer clarifications and technical information about information technology products aimed at adapting companies to the new reality of work, which more than ever is no longer a place and is now an activity that can be performed from anywhere, through any device.
- To spread and provide guidance on cyber security in the face of new models of remote and hybrid working.
- Make technology solutions aimed at including people in the new remote/hybrid work market available.
- Spreading the best business practices in the technology market, promoting fast and secure access to applications.

The Petitioner elaborated on some, but not all, of the listed items.

The first *Dhanasar* 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 and look for broader implications. *Matter of Dhanasar*, 26 I&N Dec. at 889.

In denying the petition, the Director stated that the Petitioner had not shown that his proposed endeavor would have a significant impact beyond his employer and customers within his sales territory. On appeal, the Petitioner states that his proposed endeavor "has broader implications within his field," "impacts a matter that the government has recognized as having national importance," and "contributes to the I.T. industry." We agree with the Director's determination, as explained below.

Initially, the Petitioner provided general information about the importance of sales personnel. This information does not show how the Petitioner's proposed endeavor, in particular, would be of national importance. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), <https://www.uscis.gov/policy-manual>. The Petitioner's initial submission offered few details except that he intended to work for one or more unspecified companies in the IT field.

The Director requested additional evidence to show that the benefit from the Petitioner's proposed endeavor would "sufficiently extend beyond an organization and its clients." In response, the Petitioner described various broad areas of national concern, such as cybersecurity and economic performance. The issue, however, is the national importance of his specific proposed endeavor, not the collective or aggregate importance of all businesses or the entire IT industry.

The Petitioner did not adequately explain how his specific activities would have national importance. For example, he stated that his proposed endeavor will increase profits, leading to job growth and greater tax revenue, but he did not provide any specific, corroborated figures. A stated intention to work in an important field or industry does not establish the national importance of a proposed endeavor within that field or industry.

The Petitioner's current employer, which hired him after the petition's filing date, called the Petitioner "a top contributor" whose sales work "has generated a revenue of over \$3 million." The Petitioner did not establish the wider significance of this figure beyond benefit to his employer. By statute, individuals who "will substantially benefit prospectively the national economy" are, nevertheless, subject to the job offer and labor certification requirement. Section 203(b)(2)(A) of the Act. Also, "an individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his field of expertise." *Matter of Dhanasar*, 26 I&N Dec. at 886 n.3.

The Petitioner stated that his proposed endeavor "will strengthen the U.S. company's information technology systems to prevent cyber-attacks and the loss of confidential information," because he will "contribute to the guidance and awareness of companies on cybersecurity." The Petitioner did not elaborate or explain how his work as a sales manager would have broader implications for cybersecurity.

On appeal, the Petitioner again relies largely on general assertions, stating, for example, that his “Proposed Endeavor has broader implications within his field because it will contribute to expanding sectors that need digital transformation.” The discussion that follows that claim concerns the increasing importance of IT to a variety of businesses, rather than any broader implications of the Petitioner’s own proposed endeavor as a sales manager in IT.

Also on appeal, the Petitioner repeats his intention to “contribute to the guidance and awareness of companies on cybersecurity.” The information cited on appeal establishes the importance of cybersecurity but does not explain how the Petitioner’s proposed endeavor relates to cybersecurity and would have a nationally important impact.

The Petitioner asserts that his proposed endeavor “contributes to boosting the American I.T. industry,” which is a “critical infrastructure sector.” In this section of the brief, the Petitioner describes his current employer but does not explain how his proposed endeavor “contributes to boosting the . . . industry.” As discussed above, the overall importance of a given industry or field does not suffice, by itself, to show that employment within that industry or field has national importance.

The burden of proof remains on the Petitioner to establish eligibility, and his successful employment with a large software company does not suffice to show that his proposed endeavor has broader implications that indicate national importance. The Petitioner has not overcome the Director’s determination in this regard.

Detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the other prongs of the *Dhanasar* national interest framework.²

III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.

² See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).