



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

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

In Re: 28563046

Date: NOV. 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner is a financial adviser who 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 record did not establish that the Petitioner 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

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 discretion,¹ 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

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).

- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director's decision did not render a determination as to whether the Petitioner qualifies as a member of the professions holding an advanced degree and instead focused on the Petitioner's eligibility for a national interest waiver.² Therefore, the issue before us on appeal 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. In discussing the first prong of the analytical framework set forth in *Dhanasar*, the Director concluded that the Petitioner did not establish that his endeavor has either substantial merit or national importance.

A. Substantial Merit

First, we will address the issue of substantial merit, which may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined that the Petitioner did not explain his endeavor with sufficient detail and “has not established that he intends to assist entrepreneurs and small businesses to grow” or that he “intend[s] to be an entrepreneur.” Despite acknowledging the Petitioner’s submission of industry reports, professional journals, and statements from industry experts, the Director concluded that the Petitioner did not establish that his endeavor has substantial merit. We disagree.

The record contains supporting statements from the Petitioner in which he highlighted his professional qualifications and consistently maintained that his proposed endeavor is to use his “business and finance expertise to serve as an Independent Ally of [small and medium-size enterprises] SME in the U[.]S[.]” by providing them with business solutions that will develop “staff competencies in finance subject matters,” enhance “management reporting” to enable informed decision-making, and improve “planning and control processes.” The Petitioner stated that intends to provide services that will include “fit-for-purpose financial planning and control support to my clients through (a) the development and implementation of process models, (b) training of personnel and (c) the research, development and promotion of best practices” to ensure “good operational, commercial and financial performance of my clients.” The Petitioner provided articles discussing the value of improving financial literacy and using artificial intelligence to enhance the operations of small businesses.

We conclude that the record supports the Petitioner’s claim that his proposed work as a financial adviser within the context of SMEs has substantial merit, and we therefore withdraw the Director’s adverse conclusion on this issue.

² Although the denial does not address the issue of whether the Petitioner merits the EB-2 classification as an advanced degree professional, the Director made a favorable determination on this issue in the previously issued request for evidence (RFE). We note that the record supports that prior finding based on the Petitioner’s master’s degree certificate and corresponding transcript from the Universidad [REDACTED]. However, because the Petitioner has not demonstrated his eligibility for a national interest waiver on appeal, we need not remand this matter for the purpose of having the Director further address the Petitioner’s qualification for the underlying EB-2 visa classification.

B. National Importance

Notwithstanding our favorable determination on the issue of substantial merit, for the reasons to be 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.

As noted above, the Petitioner stated that he plans to serve his client businesses by offering business solutions that will improve the client entity's staff, management reporting, and internal control processes. In response to the Director's RFE, the Petitioner cited to his personal statement as evidence in support of his contention that he adequately clarified his endeavor and explained the endeavor's "substantial economic, social, and labor benefits as well as the national initiatives it will further and support in the long-term." As although we agree that the Petitioner provided sufficient clarity explaining his endeavor, the Petitioner did not claim that the endeavor would result in "substantial economic, social, and labor benefits." And despite explaining that the proposed endeavor would offer greater financial literacy to prospective SME clients, the Petitioner did not explain how his endeavor would result in an economic or social benefit that would reach beyond the specific client entity such that the impact would rise to the level of having national importance.

The RFE response also includes an amended personal statement from the Petitioner and a business plan. The former states that the Petitioner intends to help small businesses "successfully address the prevailing post COVID-19 pandemic challenges" and assist in "the creation of new and sustainable jobs in the U[.]S[.]" The statement highlights the need for "insightful facilitation and coaching" and describes the Petitioner as "an enthusiastic facilitator and coach for the development of solutions." The statement also underscores the role of "a sustainable and efficient financial control process," asserting that the Petitioner will "add value while participating in key business processes," such as strategic planning, ethics and compliance, staff development, resource allocation, performance planning and management, and financial reporting. The Petitioner elaborated on his proposed endeavor in the business plan, stating that he intends to offer "robust and affordable finance support solutions" to SMEs with less than 20 employees in the oil and gas industry in Texas and explaining how his services would benefit prospective clients. The business plan also offers financial projections showing an anticipated net income of \$4385 at the end of the eighth quarter of the endeavor's operation. However, neither the additional information about the proposed endeavor nor the endeavor's projected income demonstrates that the endeavor would have an impact, economic or otherwise, that amounts to national importance as contemplated in *Dhanasar*.

In denying the petition, the Director questioned how the Petitioner's offer of advisory services to small businesses would result in an impact significant enough to be deemed as having national importance. The Director highlighted the individualized nature of the services the Petitioner seeks to offer and pointed to the limited impact of such services. The Director determined that the Petitioner's endeavor not broadly impact small businesses, but rather would be tailored to fit the specific needs of each prospective client. The Director concluded that the Petitioner has not shown that his undertaking has significant potential to employ U.S. workers or offer substantial positive economic effects for the nation, or that it would broadly impact the financial services field either nationally or on a global scale.

On appeal, the Petitioner asserts that he provided evidence showing that "the proposed endeavor is the subject of national initiatives" and that federal agencies have identified it "as being nationally

important.” We disagree with this assessment of the evidence, which includes a report and a news release from the U.S. Bureau of Labor Statistics that highlight job growth within the context of startup firms in the United States in 2019 and offer unemployment and industry data. Given that the Petitioner’s endeavor is not mentioned either in the report or in the news release, it is unclear how these submissions establish the national importance of the endeavor which is to provide financial services to a limited sector of SME clients within the Texas oil and gas industry. Likewise, although several of the previously submitted articles discuss small businesses and the value of financial literacy, they do not mention the Petitioner’s endeavor or establish that the endeavor would broadly impact small businesses either industry-wide or on a national scale.

The Petitioner also refers to “instances of misunderstanding and misapplication of the law that go beyond harmless error and reach levels of abuse of discretion.” However, the Petitioner does not point to specific examples of this within the Director’s denial. In fact, the Petitioner primarily focuses on the RFE’s treatment of the substantial merit element of the first prong of the *Dhanasar* framework. However, as indicated in our earlier discussion, we determined that the decision was incorrect as it pertained to the element of substantial merit, and we therefore withdrew that portion of the denial. Although the Petitioner broadly argues that he provided evidence that “suffices to establish the endeavor’s national importance,” he does not point to specific evidence or explain how it demonstrates this element of *Dhanasar*’s first prong. Rather, the Petitioner makes general statements about the RFE’s failure “to adequately assess the evidence” and asserts that the RFE “falls short of contemplating the entirety of the evidence.” However, the Petitioner does not offer a detailed analysis specifically identifying the evidence he claims was not considered. Furthermore, the Petitioner focuses almost exclusively on the perceived shortcomings of the RFE and does not specifically point to deficiencies in the denial even though the denial, rather than the RFE, is the matter that is currently before us on appeal.

The Petitioner also argues that failure to consider all the relevant evidence submitted has been found to be an abuse of discretion and cites to *Buletini v. INS*, 860 F. Supp. 1222, 1223 (E.D. Mi. 1994), in support of this argument. While we agree that an adjudicator should consider the relevant evidence in the record,³ we note that U.S. district court decisions, such as the one the Petitioner cites, are not binding precedential authority. The reasoning underlying a district judge’s decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. See *Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). More importantly, because the Petitioner does not point to the evidence he claims was not considered, he does not sufficiently support his claim. In addition, while we consider the record in its entirety, we are not required to address each submission, particularly when a submission is not relevant to the issue being discussed.

In addressing the issue of national importance, the Petitioner highlights “the financial advisory in SMEs as a matter that a government entity has described as having national importance.” But even if this were factually accurate, the assertion indicates that the government recognition pertains broadly to SMEs rather than to the Petitioner’s specific endeavor. Although SMEs are the Petitioner’s target clients, the Petitioner has not established that his work with client SMEs, either individually or collectively, will broadly impact SMEs in the oil and gas industry. We further note that the Petitioner did not clarify which “financial advisory” and “government entity” he was referring to. As discussed

³ See 8 C.F.R. § 103.2(b)(1).

above, the report and news release from the U.S. Bureau of Labor Statistics merely address job growth within the context of startup firms and provide unemployment and industry data, but neither specifically pertains to the Petitioner's endeavor or discusses the impact such an endeavor may have on SMEs either nation-wide or within a particular industry. In essence, the Petitioner does not provide evidence showing that his endeavor "has significant potential to employ U.S. workers" or that it will otherwise offer "substantial positive economic effects" that would reach the level of national importance as contemplated by *Dhanasar*. 26 I&N Dec. at 890.

The Petitioner also highlights the value of financial literacy among SMEs as being "fundamental to ensuring economic stability and recovery." However, the Petitioner has not provided sufficient evidence establishing his endeavor's broader impact on financial literacy and economic stability among SMEs in the oil and gas industry. In addressing national importance in the first prong of the framework, the *Dhanasar* decision sets out that the focus is on the specific endeavor being proposed. As such, we do not consider the indirect consequences of a petitioner's activity when determining whether it is of national importance. While the Petitioner's endeavor may improve the financial literacy of the client entities that will employ his services, it is unclear how his endeavor will have broader implications reaching beyond the clients he will serve. In sum, the Petitioner makes no compelling arguments nor offers evidence to overcome the Director's analysis and conclusion regarding the national importance of his proposed endeavor. Accordingly, the Petitioner's proposed work does not meet the national importance portion of the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her 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 her eligibility under the second and third prongs 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).

ORDER: The appeal is dismissed.