



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 28805262

Date: NOV. 07, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a video game designer and 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 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). 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. The Director concluded that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate he merits a discretionary waiver of the job offer requirement in the national interest. 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.<sup>1</sup> 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.”

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<sup>1</sup> 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.

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<sup>2</sup>, 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.

## II. ANALYSIS

The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree. The issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of the classification’s job offer requirement.

The Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first *Dhanasar* prong. The Director further found that the Petitioner did not establish that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification.<sup>3</sup> Upon de novo review, we agree with the Director’s determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.<sup>4</sup>

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 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.” *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner proposes to establish a software development, video game design, and information technology consulting business, [REDACTED] for which he would be its chief executive officer. The business plan explains that the business would focus on smart phone application development, video game software development, and information technology consulting for web application factory outsourcing, mobile application factory outsourcing, web 3.0 services, web application integration package, mobile and web game design, and development factory outsourcing. The business plan further indicates the business would be established in Florida with an office in California, serving small businesses in historically underutilized business communities. We agree with the Director that the Petitioner’s endeavor has substantial merit.

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<sup>2</sup> 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).

<sup>3</sup> The Director did not make a determination whether the Petitioner is well positioned to advance the proposed endeavor under the second prong of the *Dhanasar* framework.

<sup>4</sup> While we may not discuss every document submitted, we have reviewed and considered each one.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the record did not establish that his proposed endeavor has the potential to extend beyond his business and his clients to impact his field more broadly. Therefore, the Director found that the Petitioner did not demonstrate that his proposed endeavor is of national importance and did not meet the first prong of the *Dhanasar* framework.

The Petitioner contends on appeal that the Director "did not apply the proper standard of proof . . . , instead imposing a stricter standard, and erroneously applied the law . . . ." (emphasis omitted). The Petitioner further argues that the Director "did not give due regard" to the evidence submitted, specifically the Petitioner's resume outlining his experience; the business plan describing his credentials and the projected benefits he offers the United States; letters of recommendation attesting to his work in the field; and industry reports and articles showing the national importance of the proposed endeavor. Upon de novo review, we find the record does not demonstrate that the Petitioner's proposed endeavor satisfies the national importance element of *Dhanasar*'s first prong, as discussed below.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

On appeal, the Petitioner argues that his proposed endeavor has national importance, "particularly because it will "generate substantial ripple effects upon key technology activities on behalf of the United States" and would be "a vital aspect of U.S. gaming operations and productivity - which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy." (emphasis omitted). The Petitioner stresses his eighteen years of professional experience as an entrepreneur in the video game design field (emphasis omitted) and his educational credentials to argue that his "work offers broad implications to the United States' gaming industry, specifically through his endeavors within key commercial segments." (emphasis omitted).

The Petitioner further argues his proposed endeavor will benefit the United States "by creating jobs and economic stability" and will "help the [United States] stay competitive by bringing competitive services, helping develop the country, and producing income for the U.S. economy." He relies on his professional background to emphasize that he "has brought numerous advantages to the organizations he has served" by stimulating "his served companies' economic capacities" and prioritizing "customer satisfaction by ensuring all clients are aligned with their actual needs, furthering customer loyalty." The Petitioner argues the United States "would benefit from investing in well-versed gaming professionals such as [the Petitioner], who are knowledgeable regarding potentially profitable markets for U.S. environmentally friendly organizations in regions that are economically and politically strategic, yet extremely complex." (emphasis omitted). He contends his "proposed endeavor will have multiple positive effects on the U.S. marketplace, thus enhancing business operations on behalf of the nation, and contributing to a streamlined economic landscape." The Petitioner asserts his

“proposed endeavor is clearly of national importance, when considering how much a professional with his caliber can contribute to the national interests, and to the U.S. economy, regardless of a labor certification.” (emphasis in original).

However, the Petitioner’s reliance on his academic credentials and professional experience to establish the national importance of his proposed endeavor is misplaced. His academic credentials and professional experience relate to the second prong of the Dhanasar framework, which “shifts the focus from the proposed endeavor to the foreign national.” Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar’s first prong. 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. See *id.* at 889.

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 the field more broadly. *Id.* at 893. Similarly, the record does not demonstrate that the Petitioner’s proposed endeavor will substantially benefit the fields of information technology and video game and software development, as contemplated by Dhanasar: “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *Id.* The evidence does not suggest that the Petitioner’s software development, video game design, and information technology consulting business would impact the fields more broadly.

With the petition, the Petitioner submitted his statement and a business plan which indicate his proposed endeavor has national importance based on potential economic benefits to underutilized business areas of Florida and California. The Petitioner states his business would generate jobs for U.S. workers in these underutilized areas, improve wages and working conditions for U.S. workers, help the local community attract investments to the region, and encourage economic development. The Petitioner asserts that his entrepreneurial endeavor is particularly important given its role in the U.S. recovery from the COVID-19 pandemic.

However, the Petitioner has not provided corroborating evidence to support his claims that his business’ activities stand to provide substantial economic benefits to the underutilized Florida or California business communities or the United States. The Petitioner’s claims that his software development, video game design, and information technology consulting business will benefit the economies of the underutilized communities and of the United States have not been established through independent and objective evidence. The Petitioner’s statements are not sufficient to demonstrate his endeavor has the potential to provide economic benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that his proposed job duties as the owner and chief executive officer of his software development, video game design, and information technology consulting business would impact the information technology, software development, and video game design industries more broadly, rather than benefiting his business and his proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The business plan projects that in five years the business will hire 21 direct employees, pay wages of \$3.25 million, and generate over \$7.59 million in revenue. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner has not provided corroborating evidence demonstrating that his business' future staffing levels and business activities stand to provide substantial economic benefits to the United States and the communities in the states it will serve. While the Petitioner expresses his desire to contribute to the United States and its underutilized business areas, he has not established with specific, probative evidence that his endeavor will have broader implications in his field, will have significant potential to employ U.S. workers, or will have other substantial positive economic effects in an economically underutilized business areas of Florida and California. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *id.* Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 21 direct jobs, paying wages of over \$3.25 million, and generating \$7.59 million in revenue over a five-year period rises to the level of national importance.

The business plan further explains that the business' focus on smartphone application development, video game software development, and information technology consulting will help support the growing demand for these services in the United States. (emphasis omitted). The business plan also explains the Petitioner's experience and investment in the business and the business' projected marketing strategy, staffing, and financial calculations. However, the record does not sufficiently document the potential prospective impact, including the asserted economic benefits to the United States and the areas it intends to serve. The growth and importance of an industry is not sufficient to meet the national importance requirement under the Dhanasar framework.

The Petitioner further claims the national importance of his proposed endeavor is evidenced in industry reports and articles. The record includes industry reports and articles relating to the expected growth of the video game software developer industry; effects of COVID-19 pandemic on the video gaming industry; the video game design industry and the benefits to hiring video game developers; starting a video game company; the salary of video game designers; the web design industry; benefits of immigrants on small businesses; promoting legal immigration and integration of immigrants; and the economic benefits of immigrants and entrepreneurship. We recognize the importance of the video game design industry and related careers, and the significant contributions from immigrants who have become successful entrepreneurs; however, merely working in the video game software development field or starting a software development, video game design, and information technology consulting business is insufficient to establish the national importance of the proposed endeavor. Instead, of focusing on the importance of an industry or the need for workers in a specific industry, we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Matter of Dhanasar*, 26 I&N Dec. at 889.

In *Dhanasar*, we 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. The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor.

To further support the national importance of his proposed endeavor, the record includes an opinion from [REDACTED] professor of computer science, information systems, and cyber security at [REDACTED] University in Oregon. However, the opinion claims that the Petitioner would be working in an area of national importance, instead of focusing on the Petitioner's proposed endeavor. It describes how the United States will continue to have a major shortage of information technology workers based on growth in the industry and the demand for talent continues to exceed supply. The opinion focuses on the need for information technology professionals and how the Petitioner's experience makes him well positioned to fill the need, instead of focusing on the Petitioner's specific endeavor having a prospective impact in the fields of the information technology, software development, and video game design.

The opinion further explains that the Petitioner's endeavor has national importance based on Brazil's large market opportunities for U.S. businesses. The opinion indicates that while U.S. companies have many market challenges when looking to do business in Brazil, the Petitioner's extensive experience in the Brazilian market make him well positioned to advise U.S. companies on information technology projects planning to operate in Brazil. The opinion also notes that the Petitioner can contribute to improving and facilitating cross-border transactions between the United States and Latin America; assist U.S. corporations and U.S. investors interested in making investments and developing commercial relationships in the Brazilian market; and increasing foreign direct investment in the U.S. economy by supporting Latin American investors to invest in information technology projects in the United States.

However, the record does not indicate that the Petitioner's proposed endeavor includes collaborative works between U.S. companies and Latin America companies, or that he is actively targeting U.S. companies that do business, or plan to do business in Latin America or Brazil. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. See *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988); see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Stating that the Petitioner's professional experience would support an important industry is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The Petitioner does not demonstrate that his proposed endeavor extends beyond his business and his future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as the owner and chief executive officer of his proposed software development, video game design, and information technology consulting business offers original innovations that contribute to advancements in his industry or otherwise has broader implications for his field. The economic benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed business' software development, video game design, and information technology consulting work and the claimed economic results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments regarding the second and third prongs under the Dhanasar framework. 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 find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER:     The appeal is dismissed.