



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

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

In Re: 28354997

Date: NOV. 7, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an accounting and finance manager, seeks 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 Nebraska Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he had not established that a waiver of the required job offer, and thus of the labor certification, would be 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined 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.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

The Petitioner stated on the Form I-140, Immigrant Petition for Alien Workers, that he intends to work in the United States as an accounting and finance manager. His counsel stated in a letter of support as follows:

[The Petitioner's] proposed endeavor involves his making financial, accounting, and investment recommendations that boost his employer's portfolios; maximize their return; and allow them to diversify their assets. During his tenure with [his former employer the Petitioner] played a pivotal role as the precursor of innovative solutions that led to corporate and investment maximization. In the several roles he held within the organization, [the Petitioner] was responsible for thoroughly analyzing his employer's portfolio and financial status to determine their financial objectives, tax status, risk tolerance, or other information needed to develop a financial plan; developed individually tailored financial strategies and plans; consulted regarding investment planning, cash management and other areas [to help] the company reach financial objectives; analyzed financial data to develop strategies for meeting financial goals; and prepared financial documents summaries, investment performance reports and income projections among others.

It is apparent that [the Petitioner] is a talented Accounting and Financial Management professional dedicated to strengthening the efficiency, boosting the revenues and minimizing the risks of the companies he is serving. Therefore, it is in the best interest of the United States to allow the most experienced and talented Financial Management professionals to contribute to U.S. economic growth by assisting U.S. entities and in managing their financing and increasing their revenues.

...

Accounting and Financial Managers like [the Petitioner] are central to business survival and growth as they are employed to ensure that a company's finances lead to increased profit as well as ensure the company's future financial projections are lucrative. Therefore, the Financial Management critically serves the United States economy and the viability of its financial industry by ensuring that the nation's countless businesses are optimally operated, especially now, during an unprecedented global crisis.

[The Petitioner] endeavors to effectively assist U.S. enterprises increase their business profits by implementing successful financial strategies and reengineering their internal processes. [The Petitioner] will be focused on helping U.S. enterprises revive from the pandemic.

In response to the Director's request for evidence (RFE), the Petitioner submitted a personal statement describing his proposed endeavor as follows:

As an Accounting and Financial Management Professional, it is my role to "plan, direct, or coordinate accounting, investing, banking, insurance, securities, and other financial activities of a branch, office, or department of an establishment."

...

My proposed endeavor is to continue successfully advancing my Accounting and Finance endeavor in the U.S. through my current position at [redacted] a tropical produce import and distribution company based in [redacted] Florida.²

...

My plan in the U.S. primarily focuses on contributing to the growth of American Society and the national economy. With my academic credentials and more than 11 years of professional experience, I can contribute significantly to the economic sector and the financial relations maintained with other countries, especially Latin America, a market in which I have extensive experience. I intend to do so while progressing through my position at [redacted], a national company that has coverage in not just one but several U.S. states and engages in economic activities with foreign countries.

I intend to strategically direct the company to identify financial opportunities and threats, implement strategic planning and objectives, conduct various accounting operations, and better assess risk management, while also reviewing, approving, and tracking their sales, operational, and investment budget and designing organizational budget related to strategy fulfillment. With my background in Accounting and Finance, I have the skills to help the company develop and grow in a healthy and steady way,

² As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about this position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* framework.

bringing the same benefits that I was able to get to the company I served for more than 11 years.

The Petitioner also submitted copies of industry articles and reports as well as letters of recommendation and expert opinion letters in support of his eligibility, and noted that because accounting and financial analysis relies heavily on mathematics, he is seeking a waiver of the job offer requirement as a STEM professional.

In the decision denying the petition, the Director concluded that the Petitioner's proposed work has both substantial merit and national importance. For the reasons discussed below, we withdraw the Director's determination that the Petitioner has demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Here, the Petitioner stated his intent to work as an accounting and finance manager providing assistance to U.S. entities in order to manage their finances and increase their revenues. The Petitioner also supplemented the record with industry articles and reports pertaining to the value of financial consulting and planning on the U.S. economy. For these reasons, we agree with the Director's determination that the Petitioner's proposed endeavor has substantial merit.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his particular undertaking. Although the Petitioner's statements reflect his intention to provide financial management services to U.S. companies, 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. Further, while we note his assertion that both his degree and his endeavor incorporate mathematics and thus are in a STEM field, the Petitioner did not demonstrate that he would be engaged in activities that would impact the STEM field more broadly.³ The Petitioner's uncorroborated statements are insufficient to support his claims that his financial management activities stand to provide substantial 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.

The Petitioner submitted industry reports and articles in support of the national importance of his proposed endeavor. The reports and articles relate to the financial services industry, labor shortages and challenges posed to the financial services industry due to the COVID-19 pandemic, and the importance of STEM professionals. We recognize the importance of the finance industry and related careers; however, merely working in the fields of accounting and finance or providing financial management services to individual U.S. companies is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889.

³ The guidance related to individuals with advanced STEM degrees states that USCIS recognizes the importance of progress in STEM fields and the essential role of individuals with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies, national security, or other STEM areas important to U.S. competitiveness. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policy-manual>. However, the Petitioner did not demonstrate that his proposed endeavor in accounting and financial management relates to or has the potential to result in progress for a critical and emerging technology or national security, nor has the Petitioner demonstrated that the proposed endeavor aims to advance a STEM technology or STEM research.

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.

The record contains the Petitioner’s resume and recommendation letters from his former employer. The letters mainly discuss the Petitioner’s work experience and his professionalism, and convey his accounting expertise and the importance of his work to specific projects which helped his former employer overcome accounting and finance challenges. These letters, however, merely attest to the Petitioner’s accounting and financial management experience and his importance to improving the financial operations for his former employer, and such attestations relate to the second prong of the *Dhanasar* framework. *See id.* We acknowledge that the Petitioner provided valuable accounting and financial management services to his former employer in the past. However, the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of his proposed endeavor will rise to the level of national importance, rather than only impacting his current and future employer(s). The letters do not demonstrate that the Petitioner’s work will have national or global implications in the fields of accounting and financial management.

The record also includes two expert opinion letters. A letter from [] professor of practice at [] University, provides an analysis of the national importance of the Petitioner’s proposed endeavor stating, “his work has both substantial merit and national importance for the United States.” The opinion explains the duties of financial managers and the benefits of companies using experienced financial experts to improve their operations, thereby generating tax revenue and employment opportunities. The opinion briefly mentions that U.S. businesses using a professional with the Petitioner’s experience in accounting and finance will help them navigate doing business abroad. The opinion’s focus on the need for financial experts and accountants and how the Petitioner’s professional experience makes him well qualified to help U.S. businesses, particularly those having an interest in international business, does not demonstrate that the Petitioner’s specific endeavor may have a prospective impact in his field.

The record also includes a letter from [] professor of accounting at [] University’s [] School of Business, who focuses on the Petitioner’s role with [] and describes the accounting and financial duties he performs in the context of his current employment. Regarding the national importance of the Petitioner’s proposed endeavor, the author generally discusses the importance of the role of accounting and financial analysis on the economy as a whole, rather than discussing the manner in which the Petitioner’s specific endeavor will offer substantial economic benefits or have broader implications in his field.

Neither of the opinions focus on the Petitioner’s specific endeavor and it having a potential prospective impact on the U.S. economy, or in the fields of his proposed endeavor. Simply stating that his work would support an important industry is not sufficient to meet the “national importance” requirement under the *Dhanasar* framework. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988).

However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinions are of little probative value as they do not meaningfully address the details of the proposed endeavor and why it would have national importance.

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. Without sufficient information or evidence regarding any projected U.S. economic impact attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's financial management services to individual U.S. companies would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. See *Matter of Dhanasar*, 26 I&N Dec. at 890. While the Petitioner expresses his desire to contribute to the United States, 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 Florida or the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. *Matter of Chawathe*, 25 I&N Dec. at 376. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, and we withdraw the Director's determination on this issue.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. See *Matter of Dhanasar*, 26 I&N Dec. at 890.

The record includes the Petitioner's resume, academic credentials, documentation and certificates demonstrating courses and certifications he completed, and letters from his former employer. In denying the petition, the Director concluded that the Petitioner's education and work experience was insufficient to render him well positioned to advance his proposed endeavor. Moreover, with respect to the Petitioner's proposed endeavor to work as an accounting and financial manager for [REDACTED] the Director noted that the Petitioner had not been hired by [REDACTED] until August 2022, approximately 15 months after the petition was filed.

On appeal, the Petitioner contends that the Director did not apply the proper standard of proof, instead imposing a standard stricter than the preponderance of the evidence standard. The Petitioner further argues the Director erroneously applied the law by not considering the totality of the evidence provided, specifically the Petitioner's personal statement, letters of recommendation, academic documents, employment verification letters, and expert opinion letters.

The standard of proof in this proceeding is 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.

Upon de novo review, we agree with the Director’s determination that the Petitioner is not well positioned to advance the proposed endeavor.

While the Petitioner’s documentation shows his experience working as an accountant and finance manager, and includes letters from his foreign employer that describe his prior duties and accomplishments and praise his work, such evidence of his past experience and accomplishments does not rise to the level of rendering him well positioned to advance the proposed endeavor. We acknowledge that work done for one’s employer can be significant and impactful to the field, and that letters related to employment may help establish that a petitioner is well positioned to advance the proposed endeavor if the substance of the letters is probative of that claim. But the letters here primarily discuss the Petitioner’s contributions to his employer and his ability to provide fundamental financial management services, rather than discussing a past record of success in similar or related efforts, a model or plan for future activities, interest from potential users, or other factors that would help establish that the petitioner is well-positioned to advance the proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

The Petitioner established that he has education and experience in his field. While his academic achievements and years of professional experience render him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. In *Dhanasar*, the record established that the petitioner held multiple graduate degrees including “two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering.” *Id.* at 891. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.⁴ Moreover, although the Petitioner has claimed that his degree and proposed endeavor is in a STEM field, he has not claimed that his proposed endeavor focuses on critical and emerging technologies or other areas important to U.S. competitiveness or national security.⁵

On appeal, the Petitioner relies on the expert opinions letters, asserting that the Director did not afford sufficient evidentiary weight to such documentation. The Petitioner also seeks to resolve a date discrepancy noted by the Director regarding his prior employment history by noting it to be a clerical error by the author.

Upon review, the letters contain conclusory statements or characterizations about the Petitioner and his work that are not sufficiently supported by specifics in the letters themselves or with other

⁴ See generally 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policy-manual>.

⁵ See *id.* at F.5(D)(2).

documentation in the record to establish that he is well positioned to advance his endeavor. For example, [] recites the Petitioner's career history and discusses his contributions as an employee, and concludes that the Petitioner is "fully capable and well positioned to advance the proposed endeavor" based on his "world class education, and hands-on experience, achievements, and expertise in his field." Similarly, [] concludes that the Petitioner is well positioned to advance his proposed endeavor based on his academic credentials and his professional experience.

General observations that a petitioner has extensive experience and achievements in their field are not sufficient alone for a petitioner to meet their burden of proof. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795. As previously stated, we are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought and the submission of expert letters is not presumptive of eligibility. *Id.* Here, we conclude that letters are not sufficiently detailed or persuasive for the Petitioner to meet his burden of proof.

Additionally, the Petitioner submitted an employment verification letter from [] indicating that the Petitioner was hired by the company subsequent to the petition's filing in August 2022. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's attainment of a financial manager position with a U.S. company after the filing date cannot retroactively establish eligibility, as individuals seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. The Petitioner must establish that he is well positioned to advance his proposed endeavor at the time of filing. Accordingly, improved positioning that comes about after filing, such as this new employment opportunity, is not persuasive in establishing eligibility at the time of filing.

For the above stated reasons, the Petitioner has not established eligibility under the second *Dhanasar* prong.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate 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. Here, the Petitioner claims that he is eligible for a waiver due to the impracticality of labor certification and the shortage of professionals within his area of expertise. However, as the Petitioner has not established the national importance of his proposed endeavor and that he is well positioned to advance that endeavor as required by the first and second prongs of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.⁶

⁶ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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 and second prongs of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.