



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

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

In Re: 28125646

Date: NOV. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a clean products trader in the oil and gas industry, 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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner is eligible for the EB-2 classification as a member of the professions holding an advanced degree, but that the record did not establish that a waiver of that classification's job offer requirement 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.

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 discretion¹, 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 Petitioner is a clean products (refined petroleum product such as kerosene or diesel) trader who has been employed with [redacted] since 2017 and with its parent company in Brazil since 2010. He proposes to continue working in this capacity in the United States, whether with [redacted] or a different company in the oil and gas industry.

The Director determined that the Petitioner qualifies for the EB-2 classification as a member of the professions holding an advanced degree. Based upon his completion of a baccalaureate level degree in chemical engineering from the [redacted] University [redacted] in Brazil and the evidence of more than five years of progressive, post-baccalaureate work experience, we agree. Thus, the sole remaining issue is whether the Petitioner merits a national interest waiver, as a matter of discretion. As detailed below, we conclude that he has not established that his proposed endeavor is of national importance, and that he therefore does not meet all three prongs under the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance

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.

The Director concluded that based upon the proposed endeavor's importance to the Petitioner's employer's sale of petroleum and diesel products, as shown by reference letters and other evidence including industry reports, it is of substantial merit in the area of business. We agree.

Turning to the national importance of the Petitioner's proposed endeavor, the Director noted that while much of the evidence focused on the Petitioner's expertise and experience in his field, these factors are considered in the second prong of the *Dhanasar* analytical framework in determining whether he is well placed to advance the endeavor, and are therefore not applicable to the first prong. Further, the Director determined that the potential benefits of the proposed endeavor had not been shown to reach beyond the Petitioner's employer and its clients, and thus did not show a broader impact on the oil and gas industry.

On appeal, the Petitioner presents several arguments in asserting that the Director erred in concluding that his proposed endeavor is not of national importance. He first asserts that the Director's decision used vague and generic language and included "conflicting claims." But the Petitioner does not provide examples of any conflicting claims in the decision's analysis of the national importance of his proposed endeavor, nor can we identify any such statements. We also disagree with the former assertion, as the decision summarizes the evidence submitted, including a description of several points

made in reference letters written by the Petitioner's colleagues and other experts in the oil and gas industry. It also explains why several arguments made by the Petitioner in his initial submission as well as his response to the Director's request for evidence (RFE) do not demonstrate the national importance of his proposed endeavor.

The Petitioner next asserts that the Director erred in separating his proposed endeavor as a clean products trader from the oil and gas industry, "implying that the latter's importance is not connected to the former." However, the Director's decision is entirely in line with the precedent decision, wherein we stated that it is "the specific endeavor that the foreign national proposes to undertake" that is at issue under the first prong of the analytical framework. *Dhanasar* at 889. In other words, a petitioner cannot rely solely upon the national importance of the particular field or industry in which they work to demonstrate that their proposed endeavor meets the requirements of this prong. Similar to our conclusion in *Dhanasar* that that petitioner's proposed work as a teacher in STEM disciplines would not broadly impact the field of STEM education, and thus was not of national importance despite STEM education being of substantial merit, here the Petitioner cannot show the national importance of his proposed endeavor simply by his proposed employment in the oil and gas industry.

The Petitioner also argues that, as a group, clean products traders are critical to the industry, and that his endeavor "mitigates the negative impacts of market volatility on oil companies and, as such, is essential to keep thousands of jobs." Just as the Petitioner cannot rely on the impact of the oil and gas industry to demonstrate the national importance of his specific proposed endeavor, he also cannot rely on the cumulative effect of all workers in the same profession. And while his work may contribute to company growth as he claims, this would not demonstrate the necessary broader impact on the industry or field to show national importance.

As for whether the Petitioner's specific proposed endeavor will affect job creation and retention, we note that an endeavor that has significant potential to employ U.S. workers or have other substantial positive economic effects, particularly in an economically depressed area, may be of national importance. *Id.* at 890. Here, the Petitioner asserts such a potential effect through his proposed endeavor's impact on the operations of oil refineries in the U.S., which he links to the creation of thousands of jobs. He claims that his work in gasoline blending is critical to optimizing the operations of refineries, which is important for job creation and preservation in the oil and gas industry. However, these assertions regarding his direct impact on job creation are not supported by the evidence. While several of the reference letters, including those from [REDACTED] describe the role of traders such as the Petitioner in the export of petroleum products from refineries in the United States, and discuss the Petitioner's expertise as a trader, they do not suggest that his specific proposed endeavor will directly or substantially impact the hiring or retention of workers at those refineries.

Also, in asserting his endeavor's national importance, the Petitioner discusses his network of contacts in the oil and gas industry, particularly in Latin America, and his "expertise in gasoline blending, project management, and business development." He also states that his "track record of spearheading projects that generated substantial revenue" demonstrates his potential to provide substantial positive economic benefits to the U.S. economy. But these statements relate to his skills and record of success in similar efforts, factors which are considered when evaluating a petitioner's positioning to advance their proposed endeavor under the second prong of the *Dhanasar* framework. *Id.* As noted above and

in the Director's decision, the first prong focuses on the specific proposed endeavor's potential prospective impact, and does not include an evaluation of a petitioner's qualifications, support, and commitment to advance that endeavor.

The Petitioner also asserts in several instances in his brief that the interconnectedness of the oil and gas industry means that technology advancements and efficiency gains are shared "throughout the entire supply chain, benefitting a multitude of companies" beyond his employer. He suggests that his expertise in gasoline blending "can lead to improved efficiency and cost savings for his employer, which may, in turn, prompt other companies to adopt similar practices or innovations." But in describing his proposed endeavor, he does not indicate that he would actively work to disseminate his knowledge, processes, formulas, or other work product to others within the industry, particularly to the extent that this would result in a measurable broader impact.

For all of the reasons discussed above, we conclude that the Petitioner has not established that his proposed endeavor is of national importance, and he has therefore not shown that he meets the requirements of the first prong of the *Dhanasar* analytical framework.

III. CONCLUSION

The Petitioner also argues on appeal that he meets *Dhanasar*'s second and third prongs by showing that he is well positioned to advance his proposed endeavor and that, on balance, a waiver of the job offer requirement would be in the national interest. However, as he does not meet the first prong of the *Dhanasar* analytical framework, he has not established his eligibility for a national interest waiver. As this is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of his eligibility for the remaining prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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.