



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

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

In Re: 28650229

Date: NOV. 15, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a chef, seeks second preference immigrant classification as an individual of exceptional ability. 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. The Director concluded the Petitioner qualified as an individual of exceptional ability, but determined he did not demonstrate that his proposed endeavor would be in the national interest of the United States. The Director also concluded the Petitioner did not establish that he was well positioned to advance his proposed endeavor or that it would be beneficial to the United States to waive the requirements of a job offer and labor certification. The matter is now before us on appeal.

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 USCIS may, as matter of discretion¹, 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 Petitioner, a native and citizen of Brazil, indicated in support of the petition that he was “an accomplished chef and BBQ master” and he emphasized his participation in barbeque competitions in Brazil and the United States. The Petitioner stated that in the United States he was “positioned to continue to showcase his talent and expand the gastronomy field through his specialized talents.” The Petitioner explained that he would be employed in the United States as a sous chef for a barbeque restaurant called [REDACTED] and that he would help this company build new locations, contribute to the gastronomy field, and stimulate the American economy. He further explained that he had trained hundreds of chefs and new business owners in Brazil and planned to bring the skills he learned from this to similar businesses in the United States, including helping restaurants in South Florida “modify their operations and run on a more cost- effective basis.”

The Petitioner also asserted that the national importance of his proposed endeavor was based on it being a STEM profession. The Petitioner pointed to his “advanced skill and training in gastronomy, which combines art and science for culinary perfection, and involves training in complex courses in Gastronomy.” He asserted that his proposed endeavor would have substantial merit in the arts, as well as promote kitchen hygiene in the United States. The Petitioner submitted several articles from various publications discussing the shortage of restaurant and hospitality workers in the United States, barbeque food culture and science, and food sanitation to illustrate the national importance of his proposed endeavor.

The Director later issued a request for evidence (RFE) stating that the provided evidence did not sufficiently establish that the Petitioner’s proposed endeavor would extend beyond his employer to impact the culinary field more broadly at level of national importance. The Director requested the Petitioner submit a more detailed description of the proposed endeavor and an explanation as to why it would have national or even global implications, or significant potential to employ U.S. workers or substantial positive economic effects.

In response, the Petitioner provided a personal statement explaining his proposed endeavor as follows:

My proposed endeavor is to work in the United States as a Chef through my US company, [REDACTED] I will provide high-level Menus Planning and Preparations, Catering, BBQ competition participants’ and Judges’ training, Restaurant Consultancies, Academic Courses, and Cooking Classes services

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).

to individuals, families, private businesses, and public institutions based on my expertise in fusion cuisine, BBQ, Churrasco Grill, street food and meat processing.

In addition, the Petitioner emphasized that his “high-level Menus” would significantly contribute to broadening the horizon of the U.S. food industry by blending “the Brazilian Churrasco Grill philosophy with the US gastronomy traditions, producing the ultimate dining experience for US citizens.” The Petitioner asserted that his proposed endeavor would enrich the U.S. culinary tradition, upgrade its rapidly expanding street food industry, transfer his expertise in churrasco grill and meat processing, provide certified training for barbeque competitors and judges, combat obesity and improve health in the United States, increase U.S. international stature in the culinary arts, and assist companies in the meat market in recovery from the COVID-19 pandemic. The Petitioner submitted articles reflecting the growth of the street food market in the United States and contended his endeavor would “greatly contribute to filling the educational gap and improving the quality standards of street food offered, so as to improve the health and safety of American Citizens.” He further stated that his endeavor would help to reduce the risk of heart disease, obesity, cancer, and diabetes. He likewise asserted that his cooking classes would be offered to those in marginalized communities and “contribute to the US goals of poverty reduction and combating joblessness” through improving the dietary intake and behaviors within these communities.

Furthermore, the Petitioner pointed to a submitted business plan and emphasized hiring plans projected to hire a total to 14 employees by the end of 2027. He asserted that the U.S. economy would benefit from his endeavor as it would “help to strengthen the relations between Brazil and the U.S. and support the cultural exchange between the two nations.” The business plan also stated that the Petitioner would benefit the local economy by sourcing local ingredients, rather than corporate, and “positively affect the overall street vendor industry by infusing a new lifeblood into it and expanding the market.” The Petitioner indicated that he would also provide consulting services and share his knowledge with professionals in the food industry, including specialized Brazilian barbeque techniques, and “help create a highly qualified workforce...contributing to fulfilling U.S. industry needs and benefiting the U.S. economy.”

The Petitioner further provided two expert opinion letters. The first from [redacted] from [redacted] University stated that the Petitioner would collaborate with universities, schools, and scientific organizations to “contribute to U.S. scientific advancement through research and dissemination of knowledge about Culinary Arts & Science of Gastronomy.” [redacted] also indicated that the Petitioner would “use his experience to expand the skills of the workforce,” would assist those in marginalized communities and contribute to poverty and joblessness reduction through his proposed cooking, and greatly contribute to health and reduce childhood obesity. [redacted] [redacted] further noted that entrepreneurs “undeniably contribute to economic growth.” In addition, the Petitioner submitted another expert opinion letter from [redacted] an Assistant Professor of Nutrition Science at [redacted] University, stating that the United States would “benefit from the expertise and skills of [the Petitioner] who has advanced knowledge and skills in the areas of nutrition, food research, and meal design and management.”

In denying the petition, the Director determined that the Petitioner had made a material change to the petition by asserting that he would be an entrepreneur in response to the RFE, whereas previously he had indicated he would be employed as a sous chef with a barbeque restaurant. The Director concluded

that the evidence did not demonstrate that the Petitioner's proposed endeavor would have potential prospective impact, and that it had significant potential to employ U.S. workers or offer substantial positive economic effects for the United States.

On appeal, the Petitioner contends that the change from being employed by a barbeque restaurant to running it as its owner did not represent a material change in the endeavor, but a natural transition essential to the continuation of the proposed endeavor because the previous owner of the business had terminated paying rent. Further, the Petitioner asserts that the Director did not sufficiently consider the evidence he provided in response to the RFE, namely his personal statement, articles, the business plan, and the two expert opinions. The Petitioner provides similar assertions as to the national importance of his proposed endeavor on appeal as were submitted in response to the Director's RFE.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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. The Director did not clearly articulate whether the Petitioner's proposed endeavor had substantial merit, and upon review, we conclude he has sufficiently demonstrated that his endeavor would have substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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. 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.

As a preliminary matter, we do not agree with the Director that the change in the Petitioner's proposed endeavor from the petition to the RFE represented a material change. The Petitioner did not change his field of endeavor but, instead, provided additional facts about the expansion of his initial business plan.

However, the Petitioner has submitted a proposed endeavor of sizeable scope, setting forth purported wide-ranging impacts spreading through various industries, thereby leaving its potential prospective impact uncertain. For instance, the Petitioner stated in his personal statement that his proposed endeavor would include a wide range of activities, including working as the chef and owner of his proposed barbeque restaurant in Florida, delivering catering services, training barbeque judges and participants, offering consulting services for restaurants, providing academic courses and cooking classes, coordinating with public institutions on gastronomy, and working in street food sanitation and meat processing industry services. In sum, it would appear difficult for one individual, regardless of skill and ability, to make a national impact in all these categories as asserted by the Petitioner. The Petitioner has not provided sufficient detail and supporting documentation on how he would have a potential prospective impact on each on these differing businesses, industries, and academic fields on a national level.

For instance, the Petitioner articulated that his proposed endeavor would significantly contribute to broadening the horizon of the U.S. food industry by blending “the Brazilian Churrasco Grill philosophy with the US gastronomy traditions, producing the ultimate dining experience for US citizens.” However, it is not sufficiently clear what “broadening the horizon of the U.S. food industry” or “producing the ultimate dining experience” represents, and this is notable since it is listed as the direct outgrowth of his proposed endeavor. Likewise, the Petitioner asserted that his proposed endeavor would enrich the U.S. culinary tradition, upgrade the rapidly expanding U.S. “street food” industry, transfer his expertise in churrasco grill and meat processing, provide certified training for barbeque competitors and judges, combat obesity and improve health in the United States, increase the U.S. international stature in the culinary arts, and assist companies in the meat market in recovering from the COVID-19 pandemic.

In each case, although the Petitioner submitted general articles regarding these issues, he has not properly explained or documented how his proposed endeavor would have an impact on each of these categories or fields on a national scale. For example, the Petitioner’s business plan includes projections to hire a total to 14 employees by the end of 2027 and earn approximately \$646,182 in revenue during the 2022/2023 fiscal year, including up to \$1.29 million by the 2026/2027 fiscal year. However, it is unclear how the scale of the Petitioner’s proposed business would have a national impact on an industry the Petitioner states is growing rapidly and accounting for about \$2.5 billion in revenue annually while employing over 54,000 individuals. Further, given these projections, it is difficult to envision how the Petitioner’s business would impact meat processing, barbeque training, obesity and health, or recovery from the COVID-19 pandemic on national levels.

Further, it is noteworthy that the Petitioner’s business and hiring plans include few specifics as to how it would proceed in several of its proposed endeavors involving consulting and training services, which it asserts would have broad implications in fields such as the restaurant industry, U.S. obesity and health, meat processing, gastronomy, among others. In fact, the Petitioner’s hiring plans through 2027 include no employees devoted to its proposed consulting and training endeavors, but only employees related to its Florida-based barbeque restaurant, leaving substantial uncertainty as to its assertion that he would have a prospective impact on a national level with respect to issues such as U.S. food sanitation and safety, obesity, joblessness, or poverty. The Petitioner further contended that his proposed endeavor would also strengthen relations between Brazil and the United States; however, it provides little support as to how a proposed Brazilian/U.S. barbeque business with 14 employees would have an impact on global relations between two large nations. Again, the Petitioner has provided wide ranging and generic prospective impacts resulting from his proposed endeavor extending across various fields but has not sufficiently articulated and substantiated how his endeavor would likely lead to these national impacts. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

As noted, the Petitioner also contends on appeal that the Director did not sufficiently consider the two expert opinions he submitted on the record. Similar to the Petitioner’s assertions regarding the prospective impact of the Petitioner’s proposed endeavor, the two expert opinions lack support for their conclusions. The expert opinion from [redacted] University stated that the Petitioner would collaborate with universities, schools, and scientific organizations to “contribute to U.S. scientific advancement through research and dissemination of knowledge about Culinary Arts &

Science of Gastronomy,” and through his cooking classes, assist those in marginalized communities contributing to poverty and joblessness reduction. However, as we have discussed, the Petitioner provided few specifics as to how it would collaborate with universities or other organizations on gastronomy and included few plans for the provision of cooking classes in its business plan. [REDACTED] [REDACTED] also stated vaguely that entrepreneurs “undeniably contribute to economic growth.” It is not clear how this statement is relevant to establishing that the Petitioner’s specific proposed endeavor would have a prospective impact on a national scale.

Likewise, [REDACTED] Assistant Professor of Nutrition Science at [REDACTED] University, stated that the United States would “benefit from the expertise and skills of [the Petitioner] who has advanced knowledge and skills in the areas of nutrition, food research, and meal design and management.” However, again, the expert opinion from [REDACTED] submitted little support for this general conclusion and the opinion did little to illustrate the prospective impact of the Petitioner’s proposed endeavor on a national level. We may, in our discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int’l*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen’s eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* USCIS may even give less weight to an opinion that is not corroborated. *Id.*

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 his field more broadly. *Dhanasar*, 26 I&N Dec. at 893. Here, the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond the clientele of his proposed barbeque restaurant. The Petitioner has not sufficiently demonstrated that his proposed endeavor would have a broad influence commensurate with national importance.

The Petitioner has also not demonstrated that the endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States. As previously noted, the Petitioner set forth rather modest projections regarding his proposed barbeque restaurant in Florida, which at most, would hire 14 individuals within the first, approximately, six years of its operation. The Petitioner does not sufficiently establish the benefits to the regional or national economy that would result from his undertaking such that it reaches the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, the Petitioner did not offer sufficient evidence to demonstrate that the areas where he would operate are economically depressed, he would employ a significant population of workers in these areas, or his endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. Accordingly, the Petitioner’s proposed endeavor does not meet the first prong of the *Dhanasar* framework.

Lastly, the Petitioner also asserts on appeal that his proposed endeavor would be of national importance in promoting U.S. competitiveness in the STEM fields. USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies, or other STEM areas important

to U.S. competitiveness or national security. We may find that a STEM area is important to competitiveness or security in a variety of circumstances, for example, when the evidence in the record demonstrates that an endeavor will help the United States remain ahead of strategic competitors or current and potential adversaries, or relates to a field, including those that are research and development-intensive industries, where appropriate activity and investment, both early and later in the development cycle, may contribute to the United States achieving or maintaining technology leadership or peer status among allies and partners. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policymanual>.

However, the Petitioner here only vaguely asserts that the proposed endeavor would have an impact the STEM field related gastronomy, but as we have discussed at length, it does not sufficiently articulate how his work would specifically impact this field on a national level. Further, the Petitioner did not explain or document how his proposed endeavor would help the United States stay ahead of strategic competitors or adversaries or maintain technology leadership or peer status among allies and partners. For these reasons, the Petitioner did not demonstrate the national importance of his proposed endeavor based on its focus in a STEM field.

Because the documentation in the record does not establish the national importance of his 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, we decline to reach and hereby reserve the Petitioner's arguments with respect to the second and third prongs outlined in *Dhanasar*. *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong 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.