



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

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

In Re: 28807608

Date: NOV. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a social communications specialist providing marketing consultancy services, seeks employment-based second preference (EB-2) immigrant 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 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.

Profession is defined as of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.¹ 8 C.F.R. § 204.5(k)(3).

¹ 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.

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.” *Id.* 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,² 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.³

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record supports that conclusion. 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.

The Petitioner intends to continue his work in the international trade industry by establishing a consultancy company in [REDACTED] Florida. The purpose of the company will be to provide consulting services to small- and medium-sized businesses concerning import and export logistics. A cover letter submitted in response to a request for evidence (RFE) describes his endeavor as follows:

[The Petitioner’s] undertakings are different from the work of ordinary Foreign Trade Specialists, as he intends to open a business that will empower and contribute to the advancement of small- and medium-sized enterprises (SMEs) in the country—an undertaking of great substantial merit and national importance. He intends to offer the American nation competencies capable of generating decision-making power to organizations, and instruments for social improvement so that they can further develop the growth potential of this thriving market economy, impacting the society at large.... In the present case, Petitioner’s work has palpable broader implications, as its results are widely disseminated to other professionals in the business, marketing, and strategic planning, and management markets.... [The Petitioner’s] work will be instrumental in improving the social and cultural welfare of the local community because he will implement his expert methodologies to alleviate tax challenges prevalent in major industries, including fast-moving consumer goods.

The Director concluded, in part, that while the Petitioner’s proposed endeavor has substantial merit, the Petitioner did not establish the national importance of his endeavor. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his endeavor in order to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

² 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).

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

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.

On appeal, the Petitioner submits a brief in which he asserts that the Director's decision contains "various erroneous conclusions of both law and fact," although he does not explain how the Director erred in reaching his conclusions.⁴ The Petitioner asserts that the current evidence of record establishes his eligibility under the *Dhanasar* framework. Much of the appeal brief is identical to his RFE response cover letter, including an emphasis on a shortage of talent⁵ in the international trade industry and the importance of trade in the U.S. economy.

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. Further, 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. 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. *Id.* at 893. Here, we conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employees and clients to impact either the marketing or communication industries more broadly at a level commensurate with national importance.

The Petitioner's RFE response includes a business plan that provides a general description of his endeavor to provide international trade consulting services. Both the RFE response and the appeal brief emphasize the Petitioner's experience in his field, stating, "It is well-known that the best (if not unique) way to estimate the prospective impact of one's work is by evaluating the individual's past achievements." The record includes several expert opinion letters that provide commentary on the importance of international trade and the significance of entrepreneurs within the economy, as well as reference letters from colleagues and clients that speak to the Petitioner's professionalism and his delivery of results to his clients. These letters, however, do not describe the specifics of the Petitioner's endeavor or provide insight into how his particular endeavor to provide consulting services is of

⁴ An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).

⁵ We note that the Petitioner's suggestion that labor certification requirements be waived due to a talent shortage is not persuasive, as the purpose of the labor certification process is to identify jobs where there are no qualified, willing, and available U.S. workers.

national importance; they do not demonstrate how the Petitioner's successful performance of his job supports his assertion that his consultancy company will impact the U.S. at a national level.⁶

In addition, the Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. Specifically, he has not shown that his business activity stands to provide substantial economic benefits to Florida or to the United States. The business plan does not clarify how the anticipated creation of eleven in-house jobs—including positions for himself and his spouse—would have substantial positive economic effects in Florida or any other area in the United States. Financial forecasts predict sales of \$932,432 and payroll expenses of \$571,969 in the fifth year of the company's operation, as well as taxes totaling \$479,234. These and other projections in the business plan, however, are not accompanied by an explanation of the origins of the figures used in their calculation; the business plan's projections are not supported by probative evidence to demonstrate the credibility of the growth estimates forecasted. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 at 376. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation 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 pursuits in trade consultancy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Although the Petitioner asserts that his company will hire U.S. employees, he has not provided evidence to show that he would employ a significant population of workers in the region, or that his endeavor would offer the region or its population substantial economic benefits through employment levels, business activity, or tax revenue. Neither the business plan nor the remaining evidence in the record demonstrate that the Petitioner's endeavor to provide international trade consulting services through operation of a small business in Florida rises to the level of national importance. The Petitioner has not demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner has not provided sufficient documentation to demonstrate that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States. *Id.* 890. He has not provided data or studies establishing that the location of his proposed endeavor is in an economically depressed area or how his business would impact the region. He has not provided evidence of similar successful business models or other comparable examples to demonstrate the potential broader implications of his proposal. The Petitioner provides the following in his appeal brief:

The Petitioner has the potential to pursue the spread of his knowledge to reach a great number of professionals in the field. By promoting personnel training and participating in events as a speaker [the Petitioner] will disseminate his knowledge to teach other professionals to take a number of steps to expand companies' portfolios. He will educate people on how to implement strategic methodologies and plans, which will also help businesses generate revenue and increase the workforce.

⁶ We note that the Petitioner's experience is generally relevant not to the first prong of the *Dhanasar* framework, but to the second.

As stated above, 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. *Id.* at 893. Similarly, the record here does not establish that the Petitioner's role as an international trade consultant would impact the industry more broadly, as opposed to being limited to his employees and to the clients of his company. We conclude that the Petitioner has not established the national importance of his proposed endeavor.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *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

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.