



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

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

In Re: 28536818

Date: NOV. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a chief executive officer of an entity in the field of quality management,¹ seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) 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. *See 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 Director of the Texas Service Center denied the petition, concluding the record did not establish 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. Because this classification requires that the

¹ On appeal, the Petitioner alleges error by the Director in their characterizing of the Petitioner's role as "CEO/Entrepreneur." But they express their endeavor on appeal as a desire to "have [their] own company" to provide the services they offer. Entrepreneur is defined as "one who organizes, manages, and assumes the risks of a business or enterprise." *See* the definition of entrepreneur from *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/entrepreneur>. So it appears the Petitioner is an entrepreneur as they will provide their services by and through the auspices of their "own company."

individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest.

The Director denied the petition, concluding that whilst the Petitioner was well positioned to advance their proposed endeavor, the proposed endeavor was not of national importance such that on balance a waiver of the requirement of a job offer and labor certification would be beneficial to the United States. We agree with the Director's overall decision that the Petitioner does not qualify for a national

interest waiver, but we do not agree with and will withdraw the Director's specific finding that the Petitioner was well positioned to advance their proposed endeavor.

A. The Proposed Endeavor

The Petitioner initially described their endeavor as a venture named '[REDACTED]', providing "quality manufacturing services (QMS) and consulting services to manufacturing companies throughout the United States." Specifically, as described in their initial business plan, the endeavor's services would "address quality control, efficiency, health and safety management, and environmental regulation, as well as maintenance services for various management systems, internal auditing, quality systems development and implementation, and regulatory affairs support." The initial business plan expressed the endeavor would "positively impact the national interest of the country" by contributing to manufacturing quality and efficiency, supporting safe and improved workplace environments, supporting pandemic-related safety and operational adjustment for businesses, and promoting job creation. The Petitioner asserted in their personal statement that their endeavor would "serve as a bridge between Small and Medium Businesses and quality management systems methodologies."

An update to the Petitioner's initial business plan submitted in response to the Director's request for evidence narrowed the venue of the proposed endeavor from any "major metropolitan city in Florida" to Small Business Administration (SBA) designated "HUBZones" in [REDACTED] Florida, serving the Central Florida community with state and national expansion aspirations. The updated business plan also listed examples of the quality management systems the endeavor would design and implement for their customers such as ISO 9001, good manufacturing practices (GMP), ISO 4001, ISO 45001, and integrated management systems based on a combination of the listed and other systems. The update also included a discussion on support for quality management services in the aerospace industry, ostensibly because the Petitioner had procured employment with a tool and die company which stamped and shipped precision parts for the aerospace industry amongst others.

B. Substantial Merit and National Importance

Whilst the Director found that the Petitioner's proposed endeavor had substantial merit, they also concluded that the Petitioner did not demonstrate that their proposed endeavor was of national importance because the Petitioner did not demonstrate the broader implications of the proposed endeavor or its potential positive economic effects. For the below reasons, we agree.

The Petitioner mischaracterizes the standard of proof when they assert on appeal "that there can be a real substantial doubt, and yet still, the petition should be approved."² In *Chawathe* we concluded that only "some doubt," not "substantial doubt," as to the truth of a given assertion or contention could be resolved by relevant, probative, and credible evidence that rendered the assertion "more likely than not" or "probably" true. *Chawathe* at 376. And although the evidentiary standard in immigration proceedings is the lowest preponderance of the evidence standard, the burden is on the Petitioner alone

² The Petitioner also references the receipt number for an approved immigrant petition in favor of an unknown petitioner with a purportedly similar proposed endeavor to support its contention that the Petitioner's proposed endeavor has national importance. Individual approved immigrant petitions, like our non-precedent decisions, only apply to the parties in a specific case and do not establish any binding policy, rules, or precedent for other matters.

to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

The Petitioner initially submitted an expert opinion letter, educational documentation, industry certification, experience letters from prior employers, personal statement, business plan and registration documentation, documentation regarding the national importance of product safety and vehicle safety, articles relating to employee fitness, engagement, and economic impact of the COVID-19 pandemic and employee turnover, U.S. governmental studies related to workplace well-being and personal fitness, and articles evaluating the impact of immigrants in business communities. In response to the Director's RFE, the Petitioner submitted an updated business plan and personal statement, articles and reports relating to quality management systems, and new letters of current and previous employment.³

The Petitioner's evidence and argument does not help them carry their burden of production and persuasion because it is not persuasive relevant, material, or probative evidence relating to the national importance of the Petitioner's proposed endeavor under the first prong of the *Dhanasar* framework. The Petitioner states they applied as a "distinguished, quality control, industrial safety, occupational health and environmental systems engineer" and their "endeavor is to have [their] own company...where [they] will provide" the services they intend to perform.⁴ Essentially the Petitioner contends that their endeavor is to perform their services for small and medium businesses and manufacturing companies in the United States under the auspices of their own company or corporate entity. They ground the value of their proposed endeavor in their long career in the proposed endeavor's field and success in performing related job duties. But the Petitioner's assertion spotlights a fundamental misunderstanding of the *Dhanasar* framework's first prong. The first prong focuses on "the specific endeavor that the foreign national proposes to undertake" and its potential prospective impact. *See Dhanasar*, 26 I&N Dec. at 889. So what is critical in determining the national importance under *Dhanasar* is whether the proposed endeavor has a potential prospective impact with broader implications which rise to the level of national importance. It is not what duties or what occupation the noncitizen will fill or perform but their actual plan with their occupation and duties that is examined. The first prong of the *Dhanasar* framework is consequently unconcerned with the likelihood of success of the proposed endeavor or the Petitioner's longevity of experience in their field of endeavor previously.

And even if we were to set the nature of the Petitioner's endeavor to the side, we would still conclude that it did not meet the first prong of the *Dhanasar* framework to demonstrate its national importance

³ While we may not discuss every document submitted, we have reviewed and considered each one.

⁴ Much of the documentation the Petitioner has submitted focuses on their individual accomplishments and expertise when attesting to the national importance and substantial merit of the proposed endeavor. It is important to note that the Petitioner's accomplishments and expertise are more relevant to the second prong of *Dhanasar*, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar* at 889.

because the proposed endeavor's benefits do not broadly implicate matters of national importance. In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have a national importance for example, because it has national or even global implications within a particular field." *Id.* The broader implications of the proposed endeavor, national and/or international, can inform us of the proposed endeavor's national importance. That is not to say that the implications are viewed solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. The Petitioner's initial and updated business plan identified the "national impact" of the proposed endeavor in contributions to manufacturing quality and efficiency, support of safe workplace environments, support of pandemic-related safety and operational adjustments for businesses, and promotion of job creation to increase competitiveness and improve individual performance and health in the workplace. The Director considered these potential benefits when they determined the Petitioner's proposed endeavor was of substantial merit. However, there is insufficient evidence in the record to support the impact of the Petitioner's endeavor would permeate beyond the immediate sphere of those small and medium size businesses and manufacturing companies engaging the Petitioner for their services. In other words, the record does not adequately establish the broader implications of the Petitioner's proposed endeavor rising to a level of national importance. For example, studies cited by the Petitioner summarized the economic benefits (such as increased revenues and reduced costs) of implementing quality management programs at companies. But it is not clear from the record how increased revenues and reduced costs at individual companies would implicate matters at a level of national importance. And to the extent that the Petitioner asserts that the national importance of their proposed endeavor is apparent upon aggregation of the benefits realized by their clients engaging their services, the record as it is presently composed does not convincingly reflect the level at which this aggregation would implicate an issue rising to a level of national importance. The same applies to the Petitioner's contention that quality management principles support safe workplace environments which improve individual performance and health in the workplace and reduce personal injury lawsuits and compensation claims. The record does not persuasively demonstrate how the Petitioner's proposed endeavor would support safe workplace environments anywhere beyond the immediate cadre of entities seeking out the Petitioner's specific quality management for workplace health and safety services and how that service would rise to a level of national importance.

Contrary to the Petitioner's assertions, the Director did not disregard and in fact considered the science, technology, engineering, or mathematics (STEM) aspects of the Petitioner's proposed endeavor to evaluate its national importance. We agree with the Director that the STEM aspects of the Petitioner's proposed endeavor do not rise to a level of national importance. The Petitioner's sole claim to prompt examination of the STEM credentials of their proposed endeavor is sourced in assertions of the importance of attracting STEM professionals to the United States to advance U.S. global competitiveness. However, the Petitioner's endeavor is not connected with the recruiting or attraction of STEM professionals to the United States. And the Petitioner's possession of a degree in a STEM field does not automatically render their proposed endeavor substantially meritorious, nationally important, or substantially meritorious and nationally important. The record does not contain persuasive relevant, material, or probative evidence demonstrating how the STEM aspects of the Petitioner's proposed endeavor implicate topics rising to a level of national importance. For example, it is not clear in the record how the Petitioner's possession of a degree in a STEM field broadly implicated matters of national importance in the field of quality management. Moreover, the record

does not sufficiently describe how the Petitioner's ISO certifications and efforts to proliferate ISO certifications benefitting the specific small and medium sized business and manufacturing companies they aspire to provide their services to implicates matters of national importance.

We also stated in *Dhanasar* 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 Petitioner roots the potential positive effects of their unrealized quality management firm in their potential for job creation in areas experiencing high unemployment and revenue generation. The Petitioner optimistically expects that the endeavor would realize total revenue of \$1,193,066 and an employee census of nine people within five years of establishment. But the record contains insufficient documentation to support the Petitioner's projections. For example, the record does not support how the services the Petitioner provided would generate the income or what steps could be taken to entice employment in the particular area. The Petitioner, in response to the Director's RFE, narrowed down the locus of their proposed endeavor to the [REDACTED] Florida area and contend that they intended to employ their employees in “HUBZones.” At appeal, the Petitioner further explicated that the job creation would come not from their “business perse but primarily from the businesses [they] will assist with [their] services.” The record contains insufficient evidence to support how their proposed endeavor's job creation prospects, directly or indirectly, would be of sufficient significance that it could implicate matters of national importance. And the fact the employment the Petitioner intends to directly create would be placed in a HUBZone is unpersuasive. The HUBZone program's goal is to promote business growth in underutilized business zones with the goal of awarding three percent of federal contract dollars to companies that are HUBZone certified. Joining the HUBZone program makes a business eligible to compete for certain federal contracts in the “set-aside” category. There are several required qualifications to participate in the program, but the most dispositive requirement for purposes of our analysis is that the business seeking to participate in the HUBZone program must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. Whilst it is unknown and the record is silent about what if any federal programs exist in the “set-aside” category for the Petitioner's proposed quality management endeavor, the record is crystal clear that the Petitioner's proposed endeavor would be wholly owned and controlled by the Petitioner and that the Petitioner is not a U.S. citizen, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. So the fact that the Petitioner intended to employ the future employees of its proposed endeavor in a HUBZone is wholly irrelevant to whether the Petitioner's endeavor rose to a level of national importance. The record does not adequately reflect that creating employment in a HUBZone implicates matters rising to a level of national importance.

USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id*. The advisory opinion submitted by the Petitioner does not illustrate how the Petitioner's proposed endeavor rises to national importance either. Firstly, the writer is an associate professor of marketing at [REDACTED] University. It is unclear in the record how the writer's expertise in marketing renders them qualified to provide an opinion on the national importance of a proposed endeavor in the field of quality management, which the Petitioner categorized in the STEM field of engineering. This is further problematic because the

writer states their background relates to the “field of Business Management to which [the Petitioner] belongs.” But the Petitioner identified themselves as an engineer in quality management, not business management. Even when the writer evaluated the potential national importance of the Petitioner’s proposed endeavor, they mainly focused their analysis on the Petitioner’s past performance of quality management duties with their previous employers. And when the advisory opinion does evaluate the endeavor’s national interest, it speaks of it in vague or generalized conclusions. For example, the writer states that “[g]rowth supported by small and medium-sized enterprises pays dividends for all U.S. citizens by increasing tax revenues to the federal and state governments and increasing the funds available to spend on hospitals, schools, roads, and other essential services.” But the writer does not reference or cite to any evidence or documentation in the record that we could evaluate in order to examine the magnitude of growth the Petitioner’s specific proposed endeavor would spur and how it implicates matters such as increased tax revenue or better infrastructure rising to a level of national importance. And whilst the writer obliquely mentions the Petitioner’s proposed endeavor’s potential for job growth, they do not explain or quantify the amount of job creation, how it is significant, or even what location the job creation would benefit. The writer vaguely invokes a potential for the endeavor to broadly enhance societal welfare or cultural enrichment by “increasing business and commercial opportunities for U.S. companies.” The writer specifically mentions the magnitude of the automotive and pharmaceutical industries to support their assertion. However, it is not evident from the record how “increasing business and commercial opportunities for U.S. companies” and specifically pharmaceutical and automotive companies would be accomplished by the Petitioner’s proposed endeavor. Moreover, it is not evident in the record how societal welfare or cultural enrichment is impacted by the Petitioner’s proposed endeavor, even if it made a point of working with pharmaceutical and automotive companies to “alleviate any commercial or marketing challenges.”

The Petitioner identified the U.S. Department of Labor, the U.S. Department of Health and Human Services, the National Institute of Health, and the United States Office of Personnel Management as government entities with initiatives operating at the intersection between work, health, and wellness. Whilst health and safety management utilizing quality management techniques is a service the Petitioner’s proposed endeavor seeks to provide, it is not clear in the record how the Petitioner’s contemplated service relates to the studies the Petitioner cited as government initiatives supporting their work. And, even if they did relate, we would still conclude they did not implicate matters rising to a level of national importance because any benefit or influence, such that it is, would apply mainly only to those companies that work directly with the Petitioner. This is akin to how the benefit of someone’s teaching is generally only directly beneficial to the students being taught and not wider population. In *Dhanasar* we discussed how teaching would not impact the field of education broadly in a manner which rises to national importance. *Dhanasar* at 893. By extension activities which only benefit a small subset of individuals and companies, like the Petitioner’s proposed quality management endeavor, would not rise to a level of national importance. The record does not contain any meaningful analysis of the Petitioner’s proposed services’ broader implications or potential prospective economic impact rising to the level of national importance. And the letters of recommendation containing testimonials of the services the Petitioner performed do not describe how the benefits they have received connect to broader implications rising to national importance or any nationally important economic impact. In sum the record supports the conclusion that the potential impact of the endeavor of providing quality management to small and medium sized businesses and manufacturing companies would benefit only the individuals and entities engaging the service.

So we conclude that the Petitioner has not established that their proposed endeavor is of national importance.

C. Well Positioned to Advance the Proposed Endeavor

We disagree with the Director and hereby withdraw the Director's conclusion that the record established the Petitioner was well-positioned to advance the proposed endeavor under the second prong of the *Dhanasar* framework. In evaluating whether a petitioner is well positioned to advance their proposed endeavor, we review the following and any other relevant factors:

- A petitioner's education, skill, knowledge, and record of success in related or similar efforts;
- A petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing;
- Any progress towards achieving the proposed endeavor; and
- The interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

It is not clear how an individualized consideration of the multifactorial analysis under *Dhanasar*'s second prong would demonstrate how well positioned the Petitioner is to advance their proposed endeavor. The record as currently constituted would still not reflect how the Petitioner's prior performance of the duties described in the experience letters is either a similar effort as that of their proposed endeavor or how it constitutes a record of success. Whilst the Petitioner submitted a business plan and an updated business plan describing a plan or model for future activities, the record does not reflect any progress to achieving the proposed endeavor other than registering their company. The establishment of their company alone is not strong evidence of progress. Finally, the recommendation letters the Petitioner submitted are not material, relevant, or probative evidence in the record of interest or support in the endeavor the Petitioner proposed in their petition. As stated above, a petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. at 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). So the evidence in the record does not sufficiently describe how well situated the Petitioner would be to advance their petition's proposed endeavor.

III. CONCLUSION

As the Petitioner has not established that they meet the first or second prong of the *Dhanasar* framework, they have not shown that they are eligible for and otherwise merit a national interest waiver, and we reserve this issue. *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). As the Petitioner has not met the requirements of the *Dhanasar* analytical framework, we find that they have not established that they are eligible for or otherwise merit a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.