



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

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

In Re: 28803989

Date: NOV. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology entrepreneur, 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 petition 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 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 petition to obtain a labor certification; 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 observed that the Petitioner was eligible for EB-2 classification as an individual who is a member of the professions holding an advanced degree. But the Director ultimately concluded that the Petitioner's substantially meritorious proposed endeavor did not rise to a level of national importance as required by the first prong of *Dhanasar*. The Director also determined that the Petitioner was not well positioned to advance their proposed endeavor. And the Director concluded that on balance of applicable factors, a waiver of the requirement of a job offer, and thus a labor certification, would not be beneficial to the national interest.

Although the evidentiary standard in immigration proceedings is the lowest preponderance of the evidence standard, the burden is on the Petitioner alone 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); *see also* 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 the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

The evidence and argument the Petitioner introduced into the record does not help them carry their burden of production and persuasion. In support of their assertions of eligibility under the *Dhanasar* analytical framework, the Petitioner provided their business plan and evidence in the form of recommendation letters, professional certificates and memberships, numerous articles relating to cybersecurity and information technology, job offer letter, company registration documents, academic records, and resume.¹

The Petitioner proposed to endeavor to establish a “startup information technology (IT) consulting firm” in the United States named [REDACTED]. The endeavor proposed to “provid[e] cybersecurity services,² asse[ss] current IT strategies, [defin[e] an IT governance policy and framework to align with an enterprise’s business strategies, defin[e] project management methodologies, manag[e] implementation of IT projects, including budgeting, forecasting, project planning and execution, and performance management.”

From the outset, the Petitioner’s business plan couches their endeavor in terms of targeting their services to “mid-size to large enterprises” to provide “a holistic approach to IT management and governance by providing end to end IT solutions” based in the State of Texas. The Petitioner’s business plan advances their intention to “focus on gaining market share in Austin and the surrounding region, before pushing advertising efforts to a national audience.”

To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that their proposed endeavor has both substantial merit and national importance. The first prong focuses on the specific endeavor that the individual proposes to undertake. As stated above, the endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. the record supports the Director’s conclusion that the Petitioner’s proposed endeavor was substantially meritorious.

The Petitioner proposed their endeavor would have “national impact” by combatting cyberattacks, providing mission critical services for public and private sector organizations, and creating jobs. The Petitioner highlights “the uptick in remote working” as a reason for an “increase in network misconfigurations and delays in cyberattack detection and response, particular for smaller organization without dedicated IT support.” The business plan anticipates that their cyber security services “will generate the most revenue” and “will serve as a gateway” to the Petitioner’s proposed endeavor’s services.

¹ While we may not discuss every document submitted, we have reviewed and considered each one.

² Although we agree with the Director’s conclusion that the Petitioner’s proposed endeavor does not demonstrate influence broadly implicating national importance, we do not agree with the Director’s rationale to the extent it takes into account the Petitioner’s education, training, and experience related to “skills required to combat cyber-attacks.” Similarly, the Petitioner is not required to have “developed any strategy or idea that has been adopted by other IT professionals” to demonstrate the national importance of their proposed endeavor. The Petitioner’s education, training, experience, and skills emanating therefrom are relevant to an analysis under *Dhanasar*’s second prong, where we evaluate the positioning of an individual petitioner to advance their proposed endeavor.

The record contains numerous documents in the form of articles from media and government publications corresponding to numerous initiatives to improve cybersecurity. But these relate more to the substantiality of the proposed endeavor's merit than its national importance. In determining national importance, the focus is not on the importance of the industry in which the petitioner will work or even their past success. The focus is on "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec.at 889.

In *Dhanasar* we said that "we look for broader implications." And it is here that the Petitioner's proposed endeavor's deficiencies are revealed. The record does not adequately describe how the Petitioner's cyber security services would broadly implicate the field of cyber security. That is not to say that the broader implications of the Petitioner's cyber security services are evaluated from a geographic perspective. Broader implications are not necessarily geographically evaluated; implications within a field which demonstrate a national or even international influence of broader scale can rise to a level of national importance. But the record as it is presently constituted does not sufficiently describe how the cyber security services the Petitioner will provide will influence the prevention of cyber-attacks beyond the "mid-size to large enterprises" that may engage the service of the Petitioner's proposed endeavor.

The same is true for the IT governance services the Petitioner's proposed endeavor will offer to the "mid-size to large enterprises" it intends to target as part of its marketing strategy. The record does not adequately justify how the preparation of an IT department at a "mid-size to large enterprise" engaging the Petitioner's proposed endeavor for emerging trends and issues, alignment with business strategy, or comprehension of key stakeholders of the roles and responsibilities in IT governance at their enterprise broadly implicates matters in the field of IT governance as a whole. Or in other words, it is unclear from the record how the establishment or improvement of IT governance structures at specific entities would implicate any matters in the field beyond those specific entities.

The Petitioner's employment verification and employment letters did not reflect how the proposed endeavor implicates national importance because the letters focused on the Petitioner's past work. When evaluating the national importance of a proposed endeavor under the first prong of *Dhanasar*, we are concerned with its potential prospective or future impact. The Petitioner's demonstration of prior similar work does not have an influence on the proposed endeavor's potential prospective impact based on its national importance.

And whilst the Petitioner anticipates increasing gross income, a hiring spree increasing their head count, and increasing their expenditures on salary, it is not clear from the record how this job creation for the proposed endeavor itself would have a substantial prospective positive economic effect commensurate with national importance.³ The Petitioner's aspirations did not demonstrate the national importance of the endeavor because they, whether realized or not, would not extend beyond the endeavor itself to have an impact on a level of national importance. The record also did not contain sufficient probative, material, or relevant evidence showing how the endeavor's hiring plan would

³ Whilst we agree with the Director's conclusion regarding the job creation anticipated by the proposed endeavor, we withdraw the Director's statements about the Petitioner's "contribut[ion] of some money of [their] own towards the initial startup funds..." The lawful funding of a proposed endeavor is not relevant to evaluation of the endeavor's national importance under the *Dhanasar* analytical framework.

influence the area's unemployment rate or how the endeavor's operations and revenue rose to a level of national importance. And whilst the Petitioner asserts that the job creation from their endeavor would not be constrained by geography and they would directly employ or contract with individuals nationwide due to remote work paradigms, the record does not provide context as to the significance of potential for job creation through the proposed endeavor rising to a level of national importance or if the job creation will be in an area or areas which have traditionally been economically depressed.⁴

The relevant inquiry for evaluation of an endeavor's national importance is whether the prospective positive impact judged by the endeavor's broader implications or positive economic effects apply beyond just narrowly conferring the proposed endeavor's benefit. The Petitioner here has not demonstrated how conferring the benefit to the "mid-size to large enterprises" they intend to solicit have any implication or benefit rising to a level beyond them and touching matters of national importance.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining arguments concerning eligibility under the remaining *Dhanasar* prongs. 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-I*, 26 I&N Dec. 216, 526n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise eligible). So we conclude the Petitioner has not established that they are eligible for or otherwise merit a national interest waiver of the job offer requirement, and thus of a labor certification. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁴ Whilst we agree with the Director's conclusion regarding the job creation anticipated by the proposed endeavor, we withdraw the Director's statements about whether the Petitioner could "afford to use contractors when [they] are still trying to build a reputation" for the endeavor. The success, failure, marketing/competitive strategy, and reputation of a proposed endeavor lawfully undertaking or intending to do undertake relevant activities is irrelevant to an evaluation of whether the proposed endeavor is engaged in matters rising to a level of national importance under the *Dhanasar* analytical framework.