



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

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

In Re: 28838610

Date: NOV. 22, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as a professional holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). 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, concluding that the record did not establish that the Petitioner merits a national interest waiver, as a matter of discretion. 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,<sup>1</sup> grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance the proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

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<sup>1</sup> *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).

## II. ANALYSIS

The Director concluded the Petitioner qualifies for the EB-2 visa classification as an advanced degree professional. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the substantial merit and national importance of his proposed endeavor or that he is well positioned to pursue it under the first and second prongs of the *Dhanasar* analytical framework. While we may not discuss every document submitted, we have considered and reviewed each one.

We conclude that the Petitioner has submitted insufficient and inconsistent evidence regarding the substantive nature of his proposed endeavor. In the initial filing, the Petitioner asserted in his affidavit that he seeks “employment as an independent business owner.” He states that his “professional goal is to run strategy development processes that enable high-performance automotive manufacturers to make the transition to a low or zero-carbon future,” noting:

[M]any automotive technologies that we now take for granted, such as lightweight composite materials that increase fuel economy, were invented and promoted by high-performance manufacturers like Ferrari and Lamborghini. Companies with high-end product lines are likely to continue to play an outsized role in the transformation of the transportation industry in the years and decades ahead.

. . . .

I am well positioned to lead strategy development projects that will help high-performance automotive manufacturers innovate and bring to market new products that will reduce carbon emissions. . . . My technical background in mathematics and statistics gives me a unique ability to interface with research scientists and engineers. I can communicate research and development findings to senior managers in a clear manner, allowing leaders to make educated decisions. . .

The Petitioner provided a copy of his graduate study work analyzing issues related to the assessment of “opportunities to localize selected branches of top-ranked research institutes to leverage their competencies in ‘high performance and emotional’ technology and transfer [these technologies] from research to applications.” But he provided no specific details about how he would perform related work through his proposed endeavor. For example, he did not detail how his proposed endeavor will specifically help high-performance automotive manufacturers with their “strategy development processes that enable [them] to make the transition to a low or zero-carbon future,” nor did he sufficiently explain how his endeavor will impact the development and adoption of “green technologies” in the transportation industries at nationally significant levels.

The Director issued a request for evidence (RFE), asking for more information and evidence to establish the national importance of the proposed endeavor. In response, the Petitioner submitted a business plan for his newly created business, (K-), which he will operate as its CEO and head of marketing. K- is described therein as a “provider of high-level marketing consulting services aimed at the [a]utomotive industry in the U.S., with the goal of improving their marketing and sales capabilities.” K- is to “help automotive businesses in the U.S. transition to a low or zero-carbon future” by advising “its clients to transition to electric vehicles and will provide them with support in doing so.”

As evidence of his consulting work through K-, the Petitioner submitted letters from his clients discussing his services. One client, (B-), a company that builds “unique vans for traveling,” discusses the Petitioner’s strategies for marketing his products through new sales channels, and his ideas for increasing the price of his custom vans “up to 2.5 times.” Another client, (M-), shared that the Petitioner suggested that his company purchase hybrid vehicles for his construction business to save fuel, and that the Petitioner is also helping him devise marketing strategies for his new cleaning services business. The owner of (S-) states that the Petitioner helped him refine his company’s logistical travel routes which saved his company money in reduced fuel costs. The Petitioner also helped S- with the development of a motivational program for its sales personnel to increase S-’s average revenue per customer.

While these clients seem to appreciate the Petitioner’s ideas regarding ways that they can reduce fuel costs and increase sales revenue, the consulting services that he performed for them do not relate to his initially stated professional goal of assisting “high-performance automotive manufacturers to make the transition to a low or zero-carbon future.” The Petitioner’s initial description of his proposed endeavor did not include plans to offer the types of services that K- provides to its customers as documented in the record. The Petitioner must resolve this inconsistency and ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. 8 C.F.R. § 103.2(b)(1).

In the RFE response, the Petitioner emphasizes that he is seeking employment in the field of marketing and through K- is offering services to clients to illustrate ways in which they can leverage *existing* technologies (such as, purchasing hybrid cars instead of utilizing cars that solely rely on gas-powered engines) to save fuels costs, not as an individual who will “lead strategy development projects that will help high-performance automotive manufacturers innovate and bring to market *new products* that will reduce carbon emissions.” *Matter of Ho*, 19 I&N Dec. at 582.

We therefore conclude the RFE response presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg’l Comm’r 1978); see also *Dhanasar*, 26 I&N Dec. at 889-90. The Petitioner must

meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's change in his business endeavor after the filing date cannot retroactively establish eligibility. A petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

In determining national importance, the relevant question is not the importance of the field, 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.

On appeal, the Petitioner asserts that through K-, he "aims to improve sales and marketing efficiency for operators within the automotive industry in the United States," noting K-'s "unique approach involves tailoring their services to meet each client's specific needs and developing a practical and effective approach to help them achieve their targets in minimal time and at reduced costs." While the Petitioner indicates that the U.S. automotive industry will benefit from the creation and expansion of his business, he has not shown the national importance of K-'s prospective business operations to the nation.

For instance, he does not adequately explain through his plans how his endeavor is of national importance, rather than a means to primarily benefit himself through his business or its clients. The business plan asserts that K- will generate revenues exceeding \$300,000 in year one, which will steadily climb each year to reach revenues of over \$800,000 in year five, and as a result will create at least 10 direct jobs in that timeframe, including one for the Petitioner. The plan does not sufficiently detail the basis for these financial and staffing projections, or adequately explain how these projections will be realized. Here, the Petitioner has not demonstrated that his business will impact the nation at a level commensurate with national importance.

In his appeal brief, the Petitioner also asserts that "he will help make electric car manufacturers more competitive, aiding the United States in its transition to electric automobiles [through] encouraging operators in the automotive industry to switch to the production of electric cars in order to attain low carbon emission rates. He contends that through his activities these manufacturers "will increase their ability to compete, as the automotive industry will inevitably need to switch to sustainable energy

sources.” But he does not explain specifically how his work will increase their competitive edge, or significantly hasten the nation’s transition from fossil fuels to sustainable energy sources.

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. Although the Petitioner’s statements reflect his intention to provide marking services through his California-based company, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. 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 the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his company and its clients to impact his field or related industries more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic benefits for our nation. Specifically, he has not shown that his company’s future staffing levels would provide substantial economic benefits in California or the United States. While the Petitioner asserts that K- will hire 10 U.S. employees (including himself) within five years, he has not offered sufficient evidence that the area where the company operates is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. 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 regional or national economy resulting from the Petitioner’s projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the *Dhanasar* analysis. *See Dhanasar*, 26 I&N Dec. at 889-90. Because the Petitioner has not provided sufficient, consistent information regarding his proposed endeavor, we cannot conclude that he meets either the first or second prong, or that he has established eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose. It is unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *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 requisite first and second prongs of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.