



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

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

In Re: 28838767

Date: NOV. 28, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a topography specialist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, 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).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established 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.

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 U.S. Citizenship and Immigration Services (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;

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).

- 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 Director’s decision did not render a determination as to whether the Petitioner qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability. Instead, the decision only addressed the Petitioner’s eligibility for a national interest waiver. Therefore, the issue for consideration 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.²

With respect to his proposed endeavor, the Petitioner indicated that he intends to continue working “as a Design and Typography Technical Assistant provider and advisor. I will continue to develop technical drawings, conduct surveys, lead project teams, and facilitate the legalization of new airfields and helipads for American aeronautical companies.” He also asserted that he planned to “distribute my knowledge to other professionals in the field.”

In response to the Director’s request for evidence (RFE), the Petitioner stated that his “proposed endeavor is to offer my vast experience in drawings working with control of construction sites and preparation of inherent documents and technical drawing services related to architecture and engineering, specifically in property and construction registration, development of topographic projects and other related tasks.”³ He further indicated that he planned to “work in the survey of airport asset[s] and development of topographic projects, venal evaluation of improvements and updating of the asset register, planimetric survey and preparation of airport projects.” The Petitioner also noted that he “will provide training and qualifications, transforming professionals in the field into qualified professionals,” as well as offering training to “civil construction workers, teaching the best ways to make a work sustainable, profitable and economical.” Additionally, the Petitioner asserted that his proposed work involves:

- Development of construction projects;
- Compatibility of projects in several areas such as structural, electrical, hydro sanitary, telephony and others;
- Preparation of reports, documents, memorials and specifications;
- Quantitative surveys of materials and constructive measures of the project;
- Planning of works to rationalize costs;
- Budget worksheets for work execution;
- Supervision, coordination, management, and technical guidance of projects and works;
- Management of team, suppliers and service providers;

² Because the Petitioner has not demonstrated his eligibility for a national interest waiver on appeal, we need not remand the decision for the Director to determine whether he qualifies for the underlying EB-2 visa classification.

³ The RFE response includes a January 2023 letter from T-E-, LLC stating that the Petitioner is employed as a computer-aided design drafting technician. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about this position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* framework.

- Negotiation with customers and suppliers;
- Bidding processes with public bodies.

The Petitioner submitted information about the value of topographic maps, the survey and mapping services industry in the United States, topography and relief analytics for agricultural fields, and the agriculture and food sectors' share of the U.S. economy, as well as letters of support discussing the benefits associated with his work. The record therefore demonstrates that the Petitioner's proposed endeavor has substantial merit.

Furthermore, the Petitioner provided letters from M-L-B-, F-T-S-, A-V-R-P-, P-C-F-, M-J-T-, W-B-, and H-S-A- discussing his topography capabilities and experience. The Petitioner's skills, knowledge, and prior work in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

In addition, the Petitioner presented "Expert Opinion Letters" from T-S-, an aviation coordinator and lecturer at [REDACTED] University, and B-B-, a professor of construction management at University of [REDACTED] in support of his national interest waiver. T-S- and B-B- contend that the Petitioner's proposed endeavor is of national importance because his generic occupations of topographer and drafter and the aviation and construction industries in which he intends to work stand to contribute to our nation's economic growth. The issue here, however, is not the national 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." *Id.* at 889. While the advisory opinions cite to publicly available information from the U.S. Bureau of Labor Statistics, Deloitte, KPMG, and the White House to establish the overall importance of the Petitioner's work, they have not demonstrated how performing day-to-day technical drawing, topography, and project management services for construction and airport infrastructure projects as contemplated by the Petitioner's proposed endeavor rise to a level of national importance.⁴ The letters from T-S- and B-B- do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not demonstrated that his undertaking stands to have broader implications in the field, significant potential to employ U.S. workers, or other substantial positive economic effects.

On appeal, the Petitioner contends that his proposed endeavor has national importance because it "will aid the improvement of U.S. infrastructure." He indicates that his design and topographical technical specialist services "provide the necessary data/information needed before you make any changes to a particular piece of land and greatly reduce the risk of costly errors caused by unforeseen factors in the construction sector." The Petitioner further states that his undertaking "will assist farmers and agricultural

⁴ The Petitioner has not identified the names or locations of specific construction and airport infrastructure projects relating to his proposed endeavor.

workers” in determining “whether certain areas will be fruitful for a specific agriculture’s intent.”⁵ The Petitioner also claims that his “proposed endeavor benefits numerous industries” (such as construction, agriculture, and commercial aviation) and therefore “positively impacts the economy in a variety of ways.” In addition, the Petitioner asserts that his undertaking “will broadly enhance societal welfare or cultural enrichment.”

Furthermore, the Petitioner argues that his “proposed endeavor will prove to be instrumental in matters concerning military operations and national intelligence.”⁶ He asserts that he “will undoubtedly be a meaningful contributor to the accuracy of U.S. military operations,” but he does not identify any specific U.S. military operations or provide evidence from the U.S. military to corroborate his claim. Moreover, while the Petitioner contends that his undertaking “will allow for increased national security through an improved topography database” and involves the collection and interpretation of “geographical images to subsequently create reports that can be easily understood by other intelligence agents,” he has not demonstrated that the U.S. military or a U.S. Government agency plans to use his services for improving their topography database or gathering intelligence.

The Petitioner also mentions a “talent shortage” in his occupation. We are not persuaded by the argument that the Petitioner’s proposed endeavor has national importance due to the shortage of professionals in his field. Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

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.

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. While the Petitioner’s statements reflect his intention to provide valuable design and topography services for his U.S. employer, 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 Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company

⁵ The Petitioner has not identified the names or locations of specific agricultural projects relating to his proposed endeavor.

⁶ The Petitioner points to the letter from M-J-T- discussing his topography capabilities and experience during his time with the Brazilian Air Force. The Petitioner’s skills, knowledge, and prior work in his field, however, relate to the second prong of the *Dhanasar* framework.

or clientele to impact the field, his industry, U.S. national security, societal welfare, or our country's economy more broadly at a level commensurate with national importance.⁷

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 effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the Petitioner has not shown that the benefits to the regional or national economy resulting from his projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. 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 of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the third prong outlined in *Dhanasar*. 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).

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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁷ With regard to the Petitioner's claim that he intends to train other professionals in his field, he has not shown that his proposed work offers broader implications for his field, as opposed to being limited to those individuals who receive his instruction. While the Petitioner's plan to train others has substantial merit, he has not demonstrated that his teaching activities offer benefits that extend beyond his trainees to impact the field or his industry more broadly.