



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

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

In Re: 28962719

Date: NOV. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an aquacultural engineer, 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.

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,¹ grant a national interest waiver if the petitioner demonstrates that:

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 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.²

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 as an aquacultural engineer by establishing a consultancy company in [REDACTED] Florida. A professional plan included in the record describes his proposed endeavor as follows:

I intend to act as an Aquaculture Engineer in the American market, by offering consulting services through my own consulting company, for the Commercial Aquaculture industries and farms, strongly contributing with my technical knowledge and work experience acquired over my 20 years of experience. More specifically, the objective is to carry out management activities of production processes in the fish and shrimp farming (fattening) industries, as well as in the maturation and hatchery industries, and the elaboration of aquaculture projects (based-land, indoor), with water recirculation systems (RAS) and elaboration of protocols for the application of rations, fertilizers and probiotics, with the aim of optimizing the production of fish and shrimp (animal protein) in the American industry. I intend to provide consulting services...to companies in the state of Louisiana, Mississippi, Arkansas, Minnesota, Alabama, Connecticut, and Virginia, which are the states with the largest number of fish and seafood aquaculture companies in the United States.... In addition, I intend to work in economically underdeveloped regions, with the aim of contributing to the generation of jobs and attracting investments to these areas.

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.³

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

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ USCIS recognizes the importance of progress in the fields of science, technology, engineering, and mathematics—collectively known as STEM. See generally 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policymanual>. We considered this factor in evaluating the national importance of the Petitioner's imposed endeavor.

whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

On appeal, the Petitioner asserts that the Director “imposed novel substantive and evidentiary requirements beyond those set forth in the regulations in contravention of precedent.” The Petitioner, however, does not identify any unusual requirements imposed, nor does the Petitioner specify how the Director erred or what factors in the decision were erroneous.⁴ The Petitioner also implies, without further explanation, that the Director applied a stricter standard of proof than that of preponderance of the evidence.⁵ The Petitioner asserts that the current evidence of record establishes his eligibility under the *Dhanasar* framework, including the national importance of his proposed endeavor.

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 the aquaculture industry more broadly at a level commensurate with national importance.

The Petitioner’s appeal brief discusses the aquaculture industry and its potential for growth in the United States. Included with the brief are the following documents (several of which were previously present in the record): an article discussing farm-raised fish and an annual report on fisheries from the National Oceanic and Atmospheric Administration (NOAA); an article from Oceana.org about imported farm-raised shrimp; a fact sheet describing a White House initiative concerning hunger, nutrition, and health; and expert opinion letters discussing the importance of aquaculture and the Petitioner’s qualifications. A document entitled “Impact Analysis” cites several sources to explain the role of fisheries and aquaculture in the global demand for seafood and the growth potential for aquaculture in the U.S. market both nationally and for export. The document also provides descriptions of job positions for which the Petitioner intends to hire employees for his company. While this evidence provides insight into the aquaculture industry, it does not illustrate how the Petitioner’s particular endeavor to provide consulting services within the industry is of national importance or demonstrate that his consultancy company will impact the United States at a national level.

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 See *INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place).

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. Neither the professional plan nor the Impact Analysis clarify how the anticipated creation of 15 in-house jobs would have substantial positive economic effects in Florida or in the other states in which he intends to provide consultancy services. Financial forecasts predict a gross revenue of \$1,093,323 and payroll costs of \$889,827 in the fifth year of the company's operation. 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, 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 aquaculture 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 aquaculture consultancy 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.* at 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. One of the expert opinion letters cites a "lack of professional aquaculture specialists"⁶ in the United States and highlights the Petitioner's intention to "train new American professionals who wish to work in this promising area [of aquaculture engineering] through specialized techniques." 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 aquacultural engineering 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

⁶ We note that the suggestion that labor certification requirements should 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.

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.