



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

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

In Re: 28562401

Date: NOV. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a general and operations manager, seeks an employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the proposed endeavor was of national importance and therefore denied the 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 immigrant 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).¹

Meeting at least three of the six categories, however, does not alone establish eligibility for the exceptional ability classification.² If a petitioner satisfies at least three of the six categories for

¹ If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

² U.S. Citizenship and Immigration Services (USCIS) has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

establishing exceptional ability, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Should a petitioner demonstrate 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. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* set forth that USCIS may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates that:

- 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.

II. ANALYSIS

A. EB-2 Classification: Exceptional Ability

The Director concluded that the Petitioner's bachelor's degree and 10 years of experience satisfied the requirement for exceptional ability. However, to establish exceptional ability, the Petitioner must meet at least three of six criteria under 8 C.F.R. § 204.5(k)(3)(ii), and establish a degree of expertise significantly above that ordinarily encountered in the field under 8 C.F.R. § 204.5(k)(2). Here, the Director mentioned only two of the six criteria and incorrectly concluded that they met the evidentiary requirement. However, as the record does not establish by a preponderance of the evidence that the Petitioner is eligible for a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.³

B. National Interest Waiver

1. Substantial Merit

The Petitioner's proposed endeavor is to start a business in home flipping and serve as the business' general and operations manager. He submits a brief, and resubmits an expert opinion letter, his business plan, and resume in support of his appeal. The Petitioner highlights several statistics in his brief, some of which are: 8.4% of home sales in 2022 were from home flipping and that was the highest percentage since 2005; in 2022, there was a 72.2% increase in home flipping in Florida, the state where the Petitioner's proposed endeavor would be; and that small businesses such as the Petitioner's proposed endeavor are 44% of the economic activity, 48% of U.S. jobs and 43.5 % of the national Gross Domestic Product. These statistics show the Petitioner's endeavor has potential for positive impacts to the local real estate market and the local economy. We conclude the record satisfies the substantial merit requirement.

³ 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).

2. National Importance

In analyzing the potential prospective impact of the proposed endeavor, the Director's decision concluded that the Petitioner did not satisfy the requirement of national importance.⁴ We agree.

For a national importance determination, 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 specific 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.

The Petitioner's proposed endeavor is as a general and operations manager of his own home flipping business. In addition, his proposed endeavor will include the launch of the [REDACTED] where investors can track their investments through the entire process. On appeal, he resubmits the expert opinion letter written on his behalf, a business plan, and his resume. He provides statistics and information about the national importance of the general fields of home flipping and small business ownership, their economic impact, their impacts on local economy, tax collection, and the job opportunities his proposed endeavor will directly and indirectly provide. However, evidence of the importance of the industry or profession in general does not satisfy the standard of national importance. While some of this information is probative of meeting the substantial merit analysis we discussed above, such evidence does not establish how the Petitioner's specific proposed endeavor, as general and operations manager of his own home flipping company stands to impact the broader field or otherwise establish its national importance.

The Petitioner also states that his company could promote employment by directly employing 3 employees initially and increasing to 15 employees by year 5, and that his business will indirectly employ a substantial number of people. The business plan does not sufficiently show how many people the business will employ and how the business will achieve this goal. In addition, the record does not establish how the Petitioner's specific endeavor would affect the regional or national economy to reach the level of "substantial positive economic effects" beyond the Petitioner's company and clients intended by *Dhanasar*. *Id.* The Petitioner discusses in detail how home flipping and small businesses as a whole can have substantial and positive economic effects but does not establish how his specific endeavor will do so.

The brief then lists the unemployment rates for certain cities and counties in Florida and that the Petitioner's proposed endeavor could have positive economic impacts. As stated above, the *Dhanasar* analysis does give weight to the national importance of, "an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* However, the evidence put forth in the brief lists the area of Florida most in need as [REDACTED] County. This is not the area of Florida that the proposed endeavor will be

⁴ The Director's decision also concluded that the Petitioner was well-positioned to advance their proposed endeavor; but found on balance, waiving the job offer requirement would not benefit the United States.

serving. The brief clarifies that there are no strong obstacles to expanding work into [] County and that once matured, the proposed endeavor could expand. However, the record does not establish that the area he intends to operate in is economically depressed, that his proposed endeavor would employ a significant population of workers in the economically depressed areas, or that the proposed endeavor would offer a region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue.

The Petitioner provides an expert opinion letter from [] adjunct professor at [] College of New York. In addressing the first prong of the *Dhanasar* framework, the author similarly discusses the importance of the industry in general; its popularity, its ability to contribute to the economy, and its role in the lives of American families; but does not show how the Petitioner's specific endeavor meets the threshold of national importance. He also discusses the Petitioner's experience, however that analysis would be more relevant to the second prong of *Dhanasar*, in whether the Petitioner is well positioned to advance the endeavor. The letter does not further the discussion for the national importance of the proposed endeavor.

USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked probative value with respect to the national importance of the Petitioner's proposed endeavor.

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the proposed endeavor does not meet the national importance standard, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. See *Bagamasbad*, 429 U.S. at 25; see also *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

As the Petitioner has not met first prong of the *Dhanasar* analytical framework; in that his proposed endeavor is one of national importance, we conclude that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.