



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

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

In Re: 28947043

Date: NOV. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of digital influencer marketing, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 Petitioner qualified as an individual of exceptional ability, but that he 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. 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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:

¹ *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

II. ANALYSIS

The Director concluded that the Petitioner has fulfilled all six criteria listed in the regulations at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) and qualifies as an individual of exceptional ability upon the final merits determination. 8 C.F.R. § 204.5(k)(2). The remaining issue to be determined is whether the Petitioner meets the eligibility for a national interest waiver.

The Petitioner is a digital influencer from Brazil who has created several channels on YouTube and other social media platforms with contents focused on gaming and family entertainment. The Petitioner's proposed endeavor is to be an entrepreneur in the field of digital influencer marketing. In his business plan, the Petitioner stated that he will serve as "Owner, Digital Influencer, and Media Content Creator" of his company, [REDACTED] a U.S. based digital influencer marketing company. The Petitioner stated that his company will "create efficient influencer marketing campaigns for businesses operating in various industries" and "stimulate brand awareness for his clients and contribute to the increase in their sales."

The Director concluded that although the Petitioner established the substantial merit of the proposed endeavor, the record did not establish its national importance and as a result, did not meet the first prong of *Dhanasar*. The Director determined that the Petitioner did not establish that his business would have a broad impact on the field of digital influencer marketing commensurate with national importance, but rather that its impact would be limited to his business's customers. The Director also evaluated the evidence, such as the Petitioner's business plan, industry reports, and the expert opinion letter, and found that the record was insufficient to establish the potential for significant positive economic effects.

The Petitioner claims on appeal that Director's decision did not consider the additional documentation submitted in response to the Director's request for evidence (RFE). The Petitioner asserts that "there is no specific reason or argument articulated that contests or rebuts any piece of evidence additionally submitted that justify the Denial Decision." However, the Director provided a detailed analysis of the evidence in the record relating to the first prong of the *Dhanasar* framework and why the evidence is insufficient to establish the national importance requirement. Upon de novo review, we conclude that the Petitioner has not submitted any evidence in response to the RFE that would overcome the basis for the Director's denial.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as 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.* at 890.

The Petitioner claims on appeal that he has established national importance based on the popularity of his YouTube channels and other social media presence. The Petitioner reiterates that his various online channels have gained over 700 million views and six million subscribers in total, and that he has partnered with major companies to use and promote their products on his YouTube channels. With his RFE response, the Petitioner submitted evidence of six YouTube Channel awards based on the number of subscribers, his YouTube channel metrics, and several contracts with companies such as BBL Esportes, Level Up Interactive, Facebook Gaming, and Proctor & Gamble.

However, we note that the Petitioner's awards and contracts generally relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national" and whether he is well-positioned to advance it. *Id.* The issue here is whether the Petitioner's specific endeavor – to operate a digital influencer marketing company – has national importance under *Dhanasar*'s first prong. The Petitioner's resume, recommendation letters, and expert opinion letters all highlight his experiences and skills as a digital influencer but do not discuss the Petitioner's proposed endeavor of operating a digital influencer marketing company or its specific impact.

Instead, the Petitioner makes generalized claims about his proposed endeavor, that he will "transfer technologies developed along with his decades of experience in the field," "enable companies to help sell their products by accessing his structured marketing techniques," and "implement marketing techniques to identify the potential needs of customers and offer solutions to them accordingly." The Petitioner contends that his endeavor will "positively impact U.S. communities and companies, enabling them to create and maintain job positions through the indirect impact it generates" but the record does not sufficiently support these claims. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

In order to demonstrate his endeavor's "indirect impact" to the U.S. communities and companies, the Petitioner has submitted numerous industry reports and articles that discuss the importance of social media marketing, the role of digital influencers in shaping marketing strategies and consumer buying behaviors, and YouTube statistics and trends. The Petitioner also claims that his endeavor "impacts a matter that the government described as having national importance" and will enable "small, medium, and large-sized companies to succeed." But the industry reports and articles on record do not discuss the Petitioner's his proposed endeavor of operating a digital influencer marketing company. Rather, the evidence relates to digital marketing and the role of digital influencers in general. 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 "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. As such, we conclude that the articles and studies raised by the Petitioner do not establish that his specific proposed endeavor has national importance.

The Petitioner further indicates on appeal that he is "introducing a new modality of marketing different from the traditional, promoting and using his client's products with the videos he produces" and that he is "a prolific disseminator of culture" as his contents relate to not just "games and pop culture" but also "values related to family, loyalty, and strong relationships." We noted in *Dhanasar* that "[a]n undertaking may have national importance for example, because it has national

or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *Id.* However, the record does not sufficiently demonstrate that his digital marketing strategies or technologies substantially differ from or improve upon those already in use in the United States.

The Petitioner submitted an additional expert opinion letter that includes an analysis of the national importance of the Petitioner’s proposed endeavor. However, [REDACTED] an assistant professor of screenwriting at University of [REDACTED] generally discusses the growth of media and entertainment industry, the technological advances in the marketing field, and the value of social media influencers in driving the nation’s economy. Instead of addressing the Petitioner’s specific endeavor, [REDACTED] concludes that the endeavor is of national importance “because marketing has acquired an important place for the economic development of a whole country” and the ripple effects of such marketing activities will increase “the demand for goods and services in society,” ultimately raising the income of the companies and the nation.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, we are ultimately responsible for making the final determination regarding an individual’s eligibility for the benefit sought and the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the expert opinion letter is of little probative value as it overstates the evidence in the record and conflates the importance of the digital marketing industry overall with the national importance of the Petitioner’s specific endeavor.

The Petitioner also asserts that the business plan establishes the national importance of the proposed endeavor based on the projected staffing and revenues. The business plan anticipates that the company will grow from three employees in year one to six employees in year five, and the payroll is expected to increase from \$195,000 in year one to \$421,417 in year five. The plan further projects that the company’s revenue will grow to \$737,281 in the fifth year. However, the business plan does not sufficiently detail the basis for its financial and staffing projections, nor does it adequately explain how generating six employees and the revenue of \$737,281 will have “substantial positive economic effects” that would be commensurate with national importance. *Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. In addition, the Petitioner has not indicated that the area where his company operates is economically depressed, or that he would employ a significant population of workers in that area.

The Petitioner’s primary contention on appeal is that the Director generally disregarded the evidence submitted in response to the RFE or did not properly consider it. But in support, he largely restates arguments already presented in the initial brief and in the RFE response. The Petitioner claims that he submitted 824 pages of supporting documentation with the initial petition and 506 pages of additional evidence submitted with RFE response. However, eligibility for the benefit sought is not determined by the quantity of evidence alone but also the quality. *Id.* at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm’r 1989)). We thoroughly reviewed the record and determined that despite the submission of a large amount of documentary evidence, the Petitioner offers little corroborative evidence to support that his proposed endeavor has 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. We acknowledge that any offer of goods or services has the potential to impact the economy; however, the record does not support the Petitioner’s marketing company would operate on such a large scale that would benefit the U.S. economy or extend beyond his clients to broadly impact the digital marketing industry rising to the level of national importance.

Based on the foregoing, we find that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner’s arguments regarding his eligibility under the second and third 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-*, 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.

ORDER: The appeal is dismissed.