



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

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

In Re: 28449360

Date: OCT. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks 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. The Director did not address whether the Petitioner qualified for second-preference classification as either a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. However, the Director concluded 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. 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest

waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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 whether the proposed endeavor has national importance, we consider its potential prospective impact. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As noted above, the Director did not address whether the Petitioner qualified for second-preference classification as either a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. *See* section 203(b)(2) of the Act. Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See id.*; *see also 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"); *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).

Initially, the Petitioner described the endeavor in a document titled "definitive statement" as a plan "to continue using my expertise and knowledge to work as an [e]ntrepreneur ([e]lectrical [e]ngineering) and contribute to the U.S. economy through developing and expanding my already registered and filed company in the nation . . . , a service provider of consulting and installation services." The Petitioner elaborated that his company's scope of services would include "[e]lectrical [e]ngineering consulting to reduce the overall electrical cost, [i]mplementation of residential [s]olar [e]nergy [s]ystems, [i]mplementation of [s]olar [e]nergy [s]ystems for [c]ommercial and [i]ndustrial," and "[e]lectric [s]ystems maintenance." The Petitioner indicated that his company "will be headquartered in New Jersey to serve HUBZone areas, which are part of a United States Business Administration program for small companies that operate and employ people in historically underutilized business zones." The Petitioner added that "by the company's fifth year, I also intend to have hired a total of 22 American employees – thereby generating a total payment of wages of USD \$5,379,766 over the same 5-year period."

At the time of filing the Form I-140, Immigrant Petition for Alien Workers, the Petitioner also submitted a business plan, dated October 2021, that elaborates that the company's headquarters is located in [redacted] New Jersey, and that "[a]dditional branches will be opened on [sic] the next five years in neighborhoods of [redacted] NJ, [redacted] VI [sic], and [redacted] FL." In contrast to the Petitioner's concurrent statement that his company will hire "a total of 22 American employees" within the first five years of operation, the business plan states multiple times that the company will create "28 [d]irect and 117 [i]ndirect [j]obs and paying \$5,379,766 in wages on [sic] the first five (5) years." Specifically, the business plan indicates that the Petitioner will be the company's "CEO," supervising six "trainees"; five "engineer"; four "installer"; three "finance admin." and "sales rep,"

respectively; two “janitor”; and one “marketing manager,” “IT administrator,” “attorney,” and “admin. assistant” workers, respectively. The business plan further indicates that 20 of the workers, including the trainees, would work on a full-time basis, but the eight total finance administrators, marketing manager, IT administrator, attorney, and janitors would be contractors. We note that, although the business plan describes other position titles’ duties, it does not elaborate on what the trainees will train to do and how long they will train to do a particular task until they have been fully trained and, thus, no longer are trainees. Because six of the company’s 22 or 28 workers—approximately one quarter of the staff—are designated as these workers performing unspecified tasks for an unspecified duration, the business plan obfuscates what a significant portion of the company’s workers would actually do.

The record does not reconcile whether the Petitioner’s company will employ 22 or 28 workers within the first five years of operation, and why the Petitioner simultaneously provided inconsistent statements regarding the number of potential workers at the time he filed the Form I-140. We further note that the Petitioner asserted that his company’s total payroll expenses for the first five years of operation would be identical, regardless of whether the company employed 22 or 28 workers, which seems implausible. Furthermore, although the business plan provides total payroll expense estimates for each of the first five years, neither the business plan nor the remainder of the record elaborate on the specific wages the Petitioner would pay any particular position title, reducing the quality of information in the record. These unresolved inconsistencies cast doubt on the Petitioner’s business plan in general and on the number of workers he plans to employ and the wages he intends to pay more specifically. Doubt cast on any aspect of a petitioner’s proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988); *see also* 8 C.F.R. § 103.2(b)(1) (requiring petitioners to establish eligibility for an immigration benefit at the time of the filing and continuing through adjudication). Because the Petitioner’s statements and business plan submitted at the time of filing cast doubt on the plan in general and the intended number of workers and their wages more specifically, the reliability and sufficiency of the business plan and of the remaining evidence offered in support of the Form I-140 is undermined. *See id.*

In response to the Director’s notice of intent to deny, the Petitioner resubmitted information already in the record, discussed above, and asserted that both that information and copies of publications regarding generalized information about business and engineering establish the proposed endeavor has national importance.

The Director acknowledged the Petitioner’s submissions and concluded that the Petitioner “established that his proposed endeavor has substantial merit, and that he is well position [sic] to undertake the endeavor.” However, the Director observed that “there is no evidence to prove that [the Petitioner] will potentially impact the engendering [sic] industry at a national level.” The Director also noted that the Petitioner did not “demonstrate that his proposed endeavor has national or even global implications within a particular field or industry” or 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,” citing *Dhanasar*, 26 I&N Dec. at 890. Therefore, the Director concluded that the Petitioner did not establish that the proposed endeavor has national importance, as required by the first *Dhanasar* prong. The Director further concluded that the record did not satisfy the third *Dhanasar* prong. *See id.* at 888-91.

On appeal, the Petitioner summarizes his prior academic history and professional experience, and he reasserts that he “will share his unique expertise and skills by developing a consulting and installation services firm in the state of New Jersey. His company will be specialized in electrical engineering, solar systems, and electric systems maintenance services.” He also reasserts that his company:

will positively impact the US economy and enhance the national information security through:

- \$13,517,000 in revenues during the first five (5) years, thus paying \$612,590 in Federal Taxes.
- Creation of 28 Direct and 117 Indirect Jobs and paying \$5,379,766 in wages on [sic] the first (5) years.
- Helping the country’s federal government target to achieve 100% clean energy by 2035.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

We first note that the Petitioner’s references on appeal to his prior academic history and professional experience is inapposite to whether the prospective, proposed endeavor may have national importance. Although an individual’s academic history and professional experience are material to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—they are immaterial to whether the “specific endeavor that the [noncitizen] proposes to undertake” may have “national or even global implications within a particular field” or broader implications, such as “significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area,” as contemplated by the first *Dhanasar* prong. *Id.* at 888-91.

We next note again that the record’s unresolved inconsistent information submitted at the time of filing in the Petitioner’s “definitive statement” and the business plan, discussed above, casts doubt on the reliability and sufficiency of the information in the record in general, of the “definitive statement” and the business plan more specifically, and on the number of workers the Petitioner intends to employ and the wages he intends to pay them even more specifically. See *Matter of Ho*, 19 I&N Dec. at 591; see also 8 C.F.R. § 103.2(b)(1). Both the number of workers the Petitioner intends to employ and the wages he intends to pay them are material to whether the proposed endeavor may have national importance because they affect whether the endeavor may have broader implications, such as “significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area.” See *Dhanasar*, 26 I&N Dec. at 889.

Even to the extent that the information in the record may be deemed reliable and sufficient, it does not establish how creating 22 or even 28 direct jobs for full-time and contract workers and 117 indirect jobs may have national importance, as contemplated by the first *Dhanasar* prong. *See id.* First, the record does not establish how employing six trainees; five engineers; four installers; three finance administrators and sales representatives, respectively; two janitors; and one marketing manager, IT administrator, attorney, and administrative assistant, respectively, reflects a significant potential to employ U.S. workers in [REDACTED] New Jersey, or any other location. Similarly, although the business plan asserts that the proposed endeavor will create “177 [i]ndirect jobs,” it does not elaborate on the types of jobs that will be created, the location where those indirect jobs will be performed, the wages paid to those workers, and other information pertinent to whether the proposed endeavor may have “significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area.” *See id.* at 889-90.

Next, the Petitioner’s assertion that the proposed endeavor will “[help] the country’s federal government target to achieve 100% clean energy by 2035” supports the Director’s conclusion that the endeavor has substantial merit, noted above. However, the record—both at the time of the Director’s decision and on appeal—does not support the conclusion that the endeavor’s clean energy contributions will amount to national importance, as contemplated by *Dhanasar*. Although the Petitioner asserts that his endeavor will install residential, commercial, and industrial solar energy systems, the record does not establish how the “specific endeavor that the [noncitizen] proposes to undertake” may have “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *See id.* We note that the record does not establish how the anticipated number of the company’s clients may be construed as having national implications, nor does the record establish how the manner of installation may be construed as a nationally or globally important process improvement within the field, as contemplated by *Dhanasar*. Instead, as the Director observed, the proposed endeavor appears to benefit the Petitioner, his company, and his clients, rather than having the type of broader implications contemplated by *Dhanasar*.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong, and whether the proposed endeavor has substantial merit, as required by the first *Dhanasar* prong. *See Bagamashad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.