



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

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

In Re: 28428360

Date: OCT. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a police inspector, seeks classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts, or business. 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).

The Director of the Texas 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. 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, under section 203(b)(2) of the Act. Next, a petitioner must then demonstrate 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

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).

- 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.³ Therefore, the sole 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. In denying the petition, the Director concluded that the Petitioner did not demonstrate that he meets the first and third prongs of the *Dhanasar* analytical framework.

On appeal, the Petitioner maintains that the evidence was sufficient to demonstrate that he meets all three prongs under the *Dhanasar* framework, and otherwise warrants a national interest waiver as a matter of discretion.⁴

For the reasons discussed below, we agree with the Director's conclusion that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. The Proposed Endeavor

The record reflects that the Petitioner currently works in Brazil as a police inspector for the civil police department in [REDACTED] and as CEO of his own company. He previously worked as an associate in a law firm. On Part 6 of the petition, the Petitioner indicates he intends to work in the United States as an "Entrepreneur Director," and will "[p]lan, direct, and coordinate the operations of intelligence risk assessments."

In his business plan and personal statement submitted at the time of filing, and in his updated business plan submitted in response to the RFE, the Petitioner indicated he intends to open his own security consulting firm, [REDACTED] Florida, and serve as its General Manager. The company "will advise businesses operating across industries ranging from construction, manufacturing, and transportation, to education, hospitality and many others to create a robust security environment." In addition, his proposed endeavor "will provide due diligence services to client companies, such as realtors and car dealerships, in the process of receiving investments from Brazil" in order "to ensure investments from Brazil in the U.S. are lawful and not at risk of money laundering." He noted that although his proposed endeavor would start in Florida, by its fifth year it "will be able to serve clients nationwide," creating direct and indirect jobs.

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

³ Although not indicated in the decision, the Director informed the Petitioner in the request for evidence (RFE) that he qualifies as a member of the professions holding an advanced degree; and therefore, did not need to evaluate whether he also qualified as an individual of exceptional ability.

⁴ On appeal, the Petitioner offers an impact analysis for his proposed business. However, we will not consider this evidence for the first time on appeal as it was not presented before the Director. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

His business plans included industry and market analyses, business strategies, financial forecasts and projections, and a description of the company's proposed service offerings and personnel. With respect to future staffing, the plans project that the Petitioner's security business would hire nine employees in the first four years of operations. The business plans differ regarding their financial forecasts and projections, indicating the business would generate either \$232,339 or \$179,876 in total tax revenue and achieve either \$225,967 or \$163,727 in net income by its fifth year.

B. Substantial Merit and National Importance

To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that his proposed endeavor has both substantial merit and national importance. This prong of the *Dhanasar* framework 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 whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Director concluded that the Petitioner established that his proposed endeavor has substantial merit but determined he did not meet his burden to establish the national importance of the endeavor. Specifically, the Director determined that the Petitioner had not shown how his proposed endeavor would have broader implications within his field that would reach beyond clients utilizing his services, or that it would broadly enhance societal welfare. The Director further observed that the record did not demonstrate that the proposed endeavor has significant potential to employ U.S. workers, would impact an economically depressed area, or would have benefits to the regional or national economy that would reach the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner maintains that the Director did not give due regard to the Petitioner's initial business plan, updated business plan, personal statement, experts letters demonstrating the national importance of his proposed endeavor, and evidence of his professional experience and accomplishments "in safety, crime prevention, and crisis management strategies in Brazil." With respect to the national importance of the proposed endeavor, the Petitioner maintains that his business "will offer cutting-edge predictive crime analysis services, harnessing digital technologies," and will "influence the wider security industry to benefit the nation." In support of these claims, he points to the staffing and income projections in his company's business plan and updated business plan. He further references the U.S. Treasury Department's 2022 National Money Laundering Risk Assessment report regarding challenges facing law enforcement, regulatory agencies, and intelligence communities in combating illicit finance threats.

For the reasons provided below, we conclude that the Petitioner has not established the national importance of his proposed endeavor.

The Petitioner's business plans and personal statement emphasize the challenges currently facing the U.S. government and private businesses in protecting their employees and assets, and he has referenced and provided industry and government articles and reports addressing national concerns in the field, including gun violence, surging homicide rates, rising rates of technology-based crime, and illicit finance threats. We do not question the significance of these issues and their direct bearing on public safety and security. The Petitioner also argues the importance of the private security industry

as a component of security and safety in the United States. When determining national importance, however, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on “the specific endeavor that the foreign national proposed to undertake. *Matter of 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.*

Based on the business plans submitted initially and in response to the RFE, the Petitioner has not shown how the private security services he intends to provide to individuals and businesses would have broader implications in the private security or public safety sector. He broadly states that his endeavor “will reduce crime rates and improve the perception of security among Americans,” but the record does not provide adequate support for a determination that his specific proposed endeavor will have such a wide-reaching impact. 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, the record supports the Director’s conclusion that the Petitioner has not submitted sufficient evidence to establish what the broader implications of his work would be, or that his work would extend beyond his company and its clients to impact the private security services industry in which it intends to operate, or that it would broadly enhance societal welfare at a level commensurate with national importance. While the Petitioner proposes to perform work in an area of national importance, this is not necessarily sufficient to establish the national importance of the specific proposed endeavor.

We also stated in *Dhanasar* 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 will be understood to have national importance.” *Id.* at 890. On appeal, the Petitioner emphasizes that he will establish his company in “the Central Florida area, specifically [] and []” where it will generate “nine in-house U.S. employees in year 4” with an expected total payment of income and payroll taxes of approximately \$232,339 in its fifth year.

We reviewed the Petitioner’s business plans, including its revenue and employment projections. As previously noted, the Petitioner’s amended business plan does not corroborate the net income and payroll tax expense claims that the Petitioner makes on appeal. Rather, the Petitioner’s amended business plan projects total tax expenses of \$179,876 by its fifth year of operations. Regardless, the job creation and revenue projections included in the Petitioner’s business plans are not supported by details showing their basis or an explanation of how those projections will be realized. Even if the Petitioner had established a sufficient basis for these projections, they would not establish the national importance of the proposed endeavor.

While the above sales forecasts, tax payments, and projected income statements contained in the Petitioner’s business plans indicate that the Petitioner’s company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from his undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, the Petitioner has not offered evidence that the area where his company will operate (Central Florida) is economically depressed, that it would employ a significant population of workers in that

area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity.

Without this information, he has not adequately supported his claims regarding direct and indirect job creation and the expected direct and indirect economic benefits of operating the proposed endeavor. As such, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. For all these reasons, the Petitioner has not shown his endeavor has significant potential to employ U.S. workers or that the specific proposed endeavor would offer a region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue.

In his personal statement and appellate brief, the Petitioner has placed considerable emphasis on his academic training in law, and his "extensive knowledge of safety, crime prevention, and crisis management strategies" gained from his professional experience in the law enforcement field. The record also contains recommendation letters from his employer in Brazil. While important, the Petitioner's expertise acquired through his academic and professional career primarily relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong. A determination regarding the claimed national importance of a specific proposed endeavor cannot be inferred based on the Petitioner's past accomplishments, just as it cannot be inferred based on general claims about the importance of a given field or industry.

Finally, we acknowledge that the Petitioner provided two expert opinion letters from professors at [redacted] University School of Law and [redacted] University. In addressing the first prong of the *Dhanasar* framework, both professors state that the Petitioner's proposed endeavor "impacts a matter that a government entity has described as having national importance or is the subject of national initiatives." Specifically, they cite initiatives of the U.S. Justice Department's National Public Safety Partnership. However, the fact that a petitioner is qualified for and may accept a position in an industry or sector that is the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. The Petitioner must still demonstrate the potential prospective impact of his specific endeavor in that area of national importance, and he has not met that burden.

Further, both authors note the job creation and tax revenue figures contained in the Petitioner's initial business plan, and assert, respectively, that the proposed endeavor "will positively contribute to the nation's economy through job creation and taxes generated" and "has the significant potential to employ U.S. workers." They conclude that the Petitioner's work "has both substantial merit and national importance for the United States." Although the authors briefly address the Petitioner's initial business plan, they do not sufficiently address its prospective substantial economic impact nor do they discuss the implications of the proposed endeavor on the larger field of private security consulting services. For example, the professors have not offered sufficient evidence that the Petitioner's private security consulting services through his company would employ a significant population of workers in an economically depressed area, or that his endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity.

We observe that 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 letters lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

For the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Because the Petitioner has not established his proposed endeavor has national importance, he is not eligible for a national interest waiver under the *Dhanasar* analytical framework. We reserve our opinion regarding whether the evidence of record satisfies the second and third *Dhanasar* 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

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.