



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

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

In Re: 28487661

Date: OCT. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an artistic director, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 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.

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.” 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 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:

- 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.

II. ANALYSIS

The Director's decision did not render a determination as to whether the Petitioner qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability. Instead, the decision only addressed the Petitioner's eligibility for a national interest waiver. Therefore, the issue for consideration 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.²

With respect to his proposed endeavor, the Petitioner initially indicated that he intends to work as an artistic director in the United States. He asserted that his company, [REDACTED] will "increase opportunities for creative projects in the USA, from high-quality, socially responsible production and development to art accessible to the entire population. Based in [REDACTED] Florida, I will operate throughout the year to support and expand projects of common interests in America, opportunities to bring about the growth and exchange of the cultural sector." The Petitioner also explained that he planned "to develop international partnerships to raise awareness of education projects and ventures carried out. [REDACTED] will continue to produce cultural power projects, recognized worldwide, to strengthen the international reputation." He further stated that his proposed work as an artistic director will include:

- Assembly of shows: plays within the repertoire of Shakespeare's plays;
- Projects and songs that involve dance on medieval and contemporary themes;
- Circulation of films free of charge, in partnership with American producers and actors;
- Promote culture festival with performances in several American cities; and
- Exchange with American institution – STA – Shakespeare Theatre Association, bringing art, education and debates to various audiences in the USA.

In response to the Director's notice of intent to deny (NOID), the Petitioner stated:

I intend to act as Artistic Director in the American market, through my company [REDACTED] [REDACTED] in Florida, aiming to create, organize, and execute artistic and cultural events throughout the country, with the objective of developing and offering staging projects for shows, plays, projects, and songs, free circulation of films, promotion and facilitation of cultural festivals, exchange with Shakespeare Theatre Association

. . . .

In addition, I will develop international partnerships to disseminate creative projects and build relationships between the U.S. and other countries. I intend to promote the

² Because the Petitioner has not demonstrated his eligibility for a national interest waiver on appeal, we need not remand the decision for the Director to determine whether he qualifies for the underlying EB-2 visa classification.

transformation of communities through art, culture, and citizen education, bringing Brazilian art and culture to the United States, and pursue excellence in cultural production through the company-society-cultural product tripod.

In addition to company formation documents, the Petitioner submitted his business plan for [REDACTED] [REDACTED] This business plan includes industry and market analyses, information about his company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company will employ 4 personnel in year one, 7 in year two, 9 in year three, 11 in year four, and 12 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, while his plan offers revenue projections of \$546,900 in year one, \$763,000 in year two, \$977,000 in year three, \$1,250,000 in year four, and \$1,443,000 in year five, he did not adequately explain how these sales forecasts were calculated.

The record includes information about the Biden Administration's "Executive Order on Promoting the Arts, the Humanities, and Museum and Library Services," the Biden Administration's "Proclamation on National Arts and Humanities Month, 2022," and the Biden Administration's announcement regarding "New Funding for Youth Substance Use Prevention Groups Across the Country." In addition, the Petitioner provided articles discussing the value of connecting art to science, technology, engineering, and mathematics (STEM); the benefits of proficiency in the arts to STEM occupations; underage alcohol consumption; high-risk substance use among youth; and arts-based interventions for youth substance use prevention. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

Furthermore, the Petitioner provided letters of support from L-A-C-P-, M-R-, M-E-S-L-, L-T-, and B-H-C-V- discussing his creative projects and artistic capabilities and experience. The Petitioner's skills, knowledge, and prior work in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner also submitted an "Expert Opinion Letter" from S-P-, an associate professor at [REDACTED] University, in support of his national interest waiver. S-P- asserted that the Petitioner's proposed work is of national importance because his generic occupation of artistic director and the creative arts industry in which he works stand to "contribute to the field of arts and culture," "generate jobs and tax revenue," "increase cultural awareness," and "build international partnerships." The issue here, however, is not the national importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The letter from S-P- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work stands to broadly enhance cultural and artistic enrichment or to provide substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not

demonstrated that his undertaking stands “to impact the industry or field more broadly.” The Director also indicated that the Petitioner had not shown his proposed work has significant potential to employ U.S. workers or other substantial positive economic effects for the United States.

On appeal, the Petitioner contends that his proposed endeavor has national importance because “it focuses on promoting artistic content and cultural awareness in the U.S.” He points to the Biden Administration’s “Executive Order on Promoting the Arts, the Humanities, and Museum and Library Services” and “Proclamation on National Arts and Humanities Month, 2022.” The Petitioner also asserts that his undertaking “promotes art with a circulation of events through cities and states, aiming to promote the cultural exchange of regional artistic manifestation with a film screening and presentation of regional and national art groups.” He further maintains that his proposed work stands to contribute to U.S. public health through utilizing “arts to promote awareness to prevent the use of alcohol and drugs among the most vulnerable population: children and teenagers.” In addition, the Petitioner claims that his proposed endeavor offers “several benefits to the U.S., such as creating direct and indirect jobs for Americans and bringing economic benefits to the U.S.”

In determining national importance, the relevant question is not the importance of the field, 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.

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. While the Petitioner’s statements reflect his intention to engage in performing arts projects and to promote cultural awareness, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of 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. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its artistic projects to impact his field, the performing arts industry, U.S. public health, U.S. cultural or artistic enrichment, or our country’s economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown 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. Specifically, he has not demonstrated that his company’s future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating 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, although the Petitioner has asserted that his endeavor will “create direct and indirect jobs for Americans,” he has not

offered sufficient evidence that the area where his company will operate is economically depressed, that he 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.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. 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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.