



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

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

In Re: 28540845

Date: OCT. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a human resource specialist, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established eligibility for 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, petitioners must 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. In addition, petitioners must show the merit of 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if:

- 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.

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).

II. ANALYSIS

As it relates to the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. At initial filing, the Petitioner's cover letter stated:

Based on his solid background of more than 25 years of experience, moving through different but related professional sectors, that contributed to the excellence of the craft in which his career culminated, [the Petitioner] intends to open a HRM [Human Resource Management] consultancy company in the United States, in the state of Florida. It will be a HRM consulting firm [sic] will be called [] and will specially help small to mid-sized businesses (SMEs) improve workflows and internal communication, better engage with clients and customers, effectively managing/analyzing data, and promoting employee engagement.

....

Under his direction, [] will create further employment opportunities and qualify individuals to work in the human resources consulting sector, thereby fulfilling U.S. industry needs and benefiting the wider U.S. economy. Under [the Petitioner's] leadership, [] will target small and medium-sized companies (SMEs) in the U.S. as well as American companies working in Brazil.

[] HR will target all medium-sized companies in Florida from Year 1, but his company will be capable of providing consultancy in the way that the clients find most appropriate for certification situations (whether online or in person), being able to travel for the amount of time necessary to deliver the best people management and human resources advisory services. The Company will then further expand its target areas onto New York, [] and Texas in Year 3, Year 4, and Year 5, respectively. In addition to businesses in the U.S., [] will strive to attract American companies operating in Brazil.

In response to the Director's request for evidence, the Petitioner stated:

[The Petitioner] plans to establish a U.S.-based company called [] Human Resources . . . , which will specialize in human resources consulting services. As the Chief Executive Officer and Lead Human Resources Consultant, [the Petitioner] will spearhead the company's efforts to create employment opportunities and develop the skills of professionals in the human resources consulting sector. Through its services, [] will address the needs of small and medium-sized businesses (SMEs) in the U.S. and American companies operating in Brazil.

[The Petitioner's] vision for [] aligns with the goal of meeting the demands of the U.S. industry and contributing to the growth of the country's economy. By offering specialized consulting services to SMEs and American companies in Brazil, [] aims to foster innovation and create value for its clients. With [the Petitioner's]

leadership, the company will establish itself as a trusted partner in the human resources consulting sector, providing customized solutions that help its clients achieve their goals.

....

In addition to serving businesses in the U.S., the petitioner's company aims to attract American companies operating in Brazil. With a deep understanding of the cultural and business landscape in both countries, the petitioner's company is uniquely positioned to provide valuable insights and solutions to our clients. The Latin American market, particularly Brazil, has become an attractive destination for American businesses due to the lack of Western brand competition and continued growth in the e-commerce sector, even amidst the challenges of the COVID-19 pandemic

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner maintains:

[The] Petitioner's proposed endeavor is to open a HRM consultancy company in the United States, in the state of Florida. It will be a HRM consulting firm [sic] will be called [redacted] and will specially help small to mid-sized businesses (SMEs) improve workflows and internal communication, better engage with clients and customers, effectively managing/analyzing data, and promoting employee engagement.

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 foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner argues that "[h]uman resources and their management play a vital role in the development of a nation," the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing consultancy services through the operation of [redacted] rather than the importance of human resources and related fields and industries.² In *Dhanasar*, we 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.

The Petitioner also references his "superior performance in the field, professional achievements, and expertise." However, the Petitioner's skills, expertise, abilities, and prior accomplishments 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 he proposes to undertake has national importance under *Dhanasar*'s first prong.

Moreover, 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.

² The Petitioner's arguments and evidence contained in the record relate more to the substantial merit aspect of the proposed endeavor rather than the national importance part.

Dhanasar, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how his proposed endeavor of owning and operating a human resources consulting service largely influences the field and rises to the level of national importance. In *Dhanasar*, we determined 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. Likewise, the record does not show through supporting documentation how [] stands to sufficiently extend beyond its prospective clients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Finally, although the Petitioner provided a business plan for [] the Petitioner did not demonstrate how his business plan’s claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the total sales forecast \$358K in year 1 to \$1.830M in year 5, the business plan does not establish that the benefits to the regional or national economy would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Similarly, although the plan claims the business would create 4 positions in year 1, one of which is allocated to the Petitioner, to 14 positions in year 5, which includes the Petitioner’s position, the Petitioner did not demonstrate that such future staffing levels would provide substantial economic benefits to [] Florida or other future areas, or the region or U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not show that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not establish that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner’s proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

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. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.³

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility 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.

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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).