



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

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

In Re: 28458005

Date: OCT. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a general and operations manager, 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 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 the record did not establish: (1) the national importance of the proposed endeavor; (2) the Petitioner is well positioned to carry out his endeavor; or (3) that it would be in the United States' interest to waive the requirement of a labor certification. 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, 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:

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).

- 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.

II. ANALYSIS

A. Appeal Statement

The Petitioner has not specifically identified any erroneous conclusion of law or statement of fact in the Director's decision, as required by 8 C.F.R. § 103.3(a)(1)(v) and the Form I-290B, Notice of Appeal or Motion instructions. Instead, the Petitioner broadly disagrees with the Director's determination and offers his opinion on how the Director should have viewed the evidence. Although the Petitioner contends the Director erred in determining he did not establish eligibility under any of the three Dhanasar prongs, he does not specifically identify why or how the Director erred. For this reason alone, the appeal may be dismissed.

B. The Proposed Endeavor

The preponderance of the evidence establishes that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional. The remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the Dhanasar framework. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

In addition to not meeting the requirements for a basis of the appeal statement, the Petitioner has not identified a specific proposed endeavor. On the Form I-140, Immigrant Petition for Alien Workers, the Petitioner stated that he plans to work as a general and operations manager, which involves planning, directing, or coordinating the operations of public or private sector organizations. Other documentation submitted in the initial filing contains numerous and diverse proposed endeavor activities. For example, the Petitioner plans to:

[E]xpand [his company,] [] Consultancy and Prospecting Consulting and Business Structuring between Latin America and the United States of America, focusing on the automation and security area with the intention of serving, a priori, the following market segments: "financial institutions (banks), ports and airports, and property management (holiday homes).

He explains that "[] is a commercial representation & business consulting company[,] and its main objective is to reduce the time and operational costs in the entry processes of South American products in the North American market and vice versa." His company "works in the sales plan, in market prospecting, in the management & advertising of operations from acquisition to final receipt of products from customers. In addition to sewing local partnerships with automation & security integrators for the installation of purchased equipment and services."

To summarize, the Petitioner proposed to advise U.S. companies on the operations of public or private sector organizations; expand his own company; provide security and automation services for various market segments; and facilitate other companies' entry into either the U.S. market or the Latin

American market, which appears to involve the import and export of products and services, establishing new businesses in those areas, customs, internationalization, as well as legal and other bureaucratic matters.

The Director issued a request for evidence (RFE), requesting clarification of the proposed endeavor, explaining that the Petitioner's proposed endeavor "is extremely broad in scope and vague in detail and overall does not sufficiently establish exactly what you intend to do in the United States. . . ." In response, the Petitioner appeared to maintain some elements of general and operations management but shifted his focus to entrepreneurship. Although, the Petitioner provided more documentation, he did not clarify how he would pursue such a broad set of tasks nor what automation and security involves. Moreover, the Petitioner added that he intends to work as a "Construction Manager," to address the country's "growing demand for the revitalization of houses and their respective degraded areas."

In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* Here, the Petitioner has not done so. The Petitioner's proposed endeavor involves a variety of divergent and unspecified services, in addition to running his own business. He has not explained how he will divide his time between the various facets of his proposed endeavor. Without this detail, the Petitioner obfuscates the endeavor's prospective impact and prevents us from determining whether it is of national importance. Similarly, we cannot determine how to classify the Petitioner's occupation, as the endeavor appears to shift between general and operations management and entrepreneurship.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the *Dhanasar* analysis. Because the Petitioner has not provided sufficient specific information regarding his proposed endeavor activities, we cannot conclude that he meets either the first or second prong, or that he has established eligibility for a national interest waiver.

III. CONCLUSION

The Petitioner has not identified any specific error in the Director's decision. In addition, the documentation in the record does not establish a specific proposed endeavor such that we can determine whether it is of national importance and whether the Petitioner is well positioned to advance it. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in *Dhanasar* would serve no meaningful purpose.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.