



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

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

In Re: 28355040

Date: OCT. 27, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, who describes himself as an entrepreneur and international insurance specialist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability. *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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for a national interest waiver. 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. [If a doctoral degree is customarily required for the specialty, the non-citizen must a United States doctorate or a foreign equivalent degree. (delete if doctorate not an issue)] 8 C.F.R. § 204.5(k)(2).

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.<sup>1</sup> 8 C.F.R. § 204.5(k)(3).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).<sup>2</sup> Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.<sup>3</sup> If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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.” *Id.* 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 USCIS may, as matter of discretion,<sup>4</sup> 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
- On balance, waiving the job offer requirement would benefit the United States.<sup>5</sup>

## II. EB-2 CLASSIFICATION

Although addressed in a request for evidence (RFE), the Director’s decision does not discuss or provide a determination concerning the issue of whether or not the Petitioner qualifies for the EB-2 classification as either an advanced degree professional or as an individual of exceptional ability.<sup>6</sup> Since the record does not establish by a preponderance of the evidence that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner’s eligibility for the EB-2 classification.<sup>7</sup>

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<sup>1</sup> Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

<sup>2</sup> If these types of evidence do not readily apply to the individual’s occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

<sup>3</sup> USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

<sup>4</sup> 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).

<sup>5</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>6</sup> We note that, while the RFE cites criteria that the Petitioner has met to demonstrate exceptional ability and declares that he has done so, neither the RFE nor the decision letter provide a final merits determination of his qualifications.

<sup>7</sup> 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 alternative issues on appeal where an applicant is otherwise ineligible).

### III. NATIONAL INTEREST WAIVER

The remaining issue for consideration on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of 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.

The first prong, substantial merit and national importance, 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 Petitioner intends to own and operate an insurance sales company in the United States, and the record includes several reports discussing healthcare reform and the projected growth of the insurance industry. The record also contains a business plan in which the Petitioner describes his proposed endeavor as follows:

[The Petitioner] is a highly qualified insurance agent who will establish and direct the operations of the Florida-based insurance agency...that will specialize in offering life, health, and auto insurance policies of leading insurance companies in the U.S. Upon approval of his visa, [he] will be the Chief Executive Officer and sole owner of the company.

...

[The Petitioner] endeavors to contribute to the overall revenue growth of the Insurance Industry in the U.S.... The Insurance Industry is currently facing a talent shortage. For [it] to thrive, it needs to invest in employee training and education to help insurance professionals grow. [The Petitioner] will provide training to current and future industry professionals, which will help create a qualified workforce that will not only help solve the talent crisis, but also benefit the U.S. economy through improvement of the quality of services provided, leading to further economic expansion. To help insurance agents in the U.S. develop new professional skills and succeed in their careers, the Petitioner will transfer his extensive expertise and skills in sales, personalized insurance services, and customization of insurance packages.

Additionally, the Petitioner will contribute to the U.S. economy by creating new jobs for U.S. citizens, generating increased annual revenues, and paying increasing taxes.

The Director determined that, although the proposed endeavor has substantial merit, the Petitioner did not establish that the proposed endeavor has national importance.

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 "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. Further, to evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of the Petitioner’s work. 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.

On appeal, the Petitioner submits a brief in which he reiterates his experience<sup>8</sup> and reasserts his eligibility for a national interest waiver. Upon review of the record, we have determined that while the Petitioner’s endeavor has substantial merit, the record does not demonstrate that the endeavor has national importance. A discussion of the evidence of record as it relates to the Petitioner’s eligibility under the first prong of the *Dhanasar* framework follows.

In addition to an appeal brief, the Petitioner resubmits an expert opinion letter and a business plan previously included in the record. We note that, with regard to the national importance of the Petitioner’s proposed endeavor, the opinion letter does not provide additional insight or detail concerning the Petitioner’s specific proposed endeavor; the letter discusses the benefits of immigration and entrepreneurship to economies, the importance of innovation, and the insurance industry—topics also covered in the industry reports and the Petitioner’s business plan. The business plan itself is generalized and emphasizes those same topics at length, as well as discusses the Petitioner’s experience; it does not address how, specifically, the Petitioner’s role as the owner of an insurance sales company will impact the insurance industry or the regions in which he expects his business to operate. The business plan lists traditional marketing strategies and states that the company will provide “personalized service” to “clients,” but does not address what clients he intends for the company to pursue. And while the Petitioner contends on appeal that it cannot be predicted whether his services will be limited to benefiting his clients, as opposed to impacting the healthcare or insurance industries more greatly, he does not provide evidence to support that contention. As stated above, 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). Further, both the business plan and the expert opinion letter assert that the Petitioner will share his expertise as an insurance specialist and thereby boost the economy; the opinion letter states the following:

[The Petitioner] will hire a team of Insurance Agents and transfer his knowledge to the Company’s staff to guarantee the premium quality of services and an exceptional level of client satisfaction. The Petitioner’s efforts will create a myriad of benefits for the individuals who receive training, the U.S. labor market and economy, as well as for the Company.

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<sup>8</sup> We would consider the Petitioner’s experience in evaluating his eligibility under the second *Dhanasar* prong. We note that letters of recommendation and awards, while demonstrative of the Petitioner’s career success in the field of insurance sales, do not speak to the national importance of the Petitioner’s specific endeavor to operate an insurance sales company in the United States.

As stated previously, 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. The Petitioner's intent to transfer his knowledge to his company's staff is not considered an activity that will have a broad impact on the insurance industry or the field of insurance sales.

In addition, the business plan also anticipates an accumulation of twelve employees over its first five years of operation. It is not clear how training twelve insurance agents would benefit the U.S. labor market or the economy. The Petitioner has not demonstrated that the endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. The business plan does not clarify how the anticipated creation of twelve jobs would have substantial positive economic effects in Florida or any other area in the United States. Financial forecasts predict sales of \$1,171,875 and payroll expenses totaling \$780,655 by the fifth year of the company's operation, as well as taxes totaling \$144,784. These and other projections in the business plan, however, are not accompanied by an explanation of the origins of the figures used in their calculation. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 at 376. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's pursuits in the real estate industry would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. 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 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 alternative issues on appeal where an applicant is otherwise ineligible).

### III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

**ORDER:** The appeal is dismissed.