



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

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

In Re: 28623393

Date: OCT. 30, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in information technology, 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 Nebraska 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.

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).

Regarding 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 provided a statement indicating:

. . . I plan to open my own business in the US, with the aim of applying my extensive knowledge and transferable skills derived from my prior studies and/or professional experience to contribute to the US economy as more fully described below. I am positive that the knowledge and transferable skills derived from my prior studies and/or professional experience will be instrumental in achieving success in this regard.

. . . .

I seek employment as an independent business owner in the field of information technology, seeking to offer my services across the US. This field has been the subject of important U.S. government initiatives, and clearly plays an overall important role in the US economy

In response to the Director's request for evidence, the Petitioner submitted a business plan for [redacted] [redacted] and related company documents. According to the business plan:

[redacted] will provide services such as data analysis, data security, and courses focused on helping businesses make decisions based on their data, identifying areas for improvement, and protecting data against data breaches. [redacted] will target small businesses and organizations from various industries, initially on the West Coast, then expand to all other states.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner asserts that he "will operate a substantial business, which will result in substantial beneficial, impact, the ripple effect of which will likely span across industries and, therefore, will be national in scope."

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 a wide range of topics, such as small business figures, STEM (science, technology, engineering, and mathematics) employment growth, and economic benefits from immigrants, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of owning and operating his business rather than the importance of a spectrum of general issues. 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 "extensive knowledge" and "professional experience." 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. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how his proposed endeavor of owning and operating an information technology company 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 his business 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, even if credible or plausible, the Petitioner did not demonstrate how his company would have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. *Dhanasar. Id.* at 890. For instance, while the plan claims the business would create 48 positions in year 1 to 1,069 positions in year 5, the Petitioner did establish that such future staffing levels would provide substantial economic benefits to the region or U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for example, 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.

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.²

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.

² 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).