



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

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

In Re: 29060597

Date: SEPT. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a logistics and shipping manager and an entrepreneur in the logistics and supply chain management field, 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 that the Petitioner established he was an advanced degree professional, but had not demonstrated 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. 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 because the Petitioner has not established that his endeavor has national importance and thus, does not meet the first prong of the *Dhanasar* framework.

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.

“Advanced degree” means any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying 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
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

A. EB-2 Visa Classification

The Director determined that the Petitioner is a member of the professions holding an advanced degree. However, upon de novo review, we disagree.

In addition to the definition of “advance degree” provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” Although the Petitioner provided a copy of his U.S. bachelor’s degree in management and business, he did not submit official transcripts. Further, while he also included letters of recommendation from colleagues, they 1) are not from former or current employers, 2) do not include specific dates of employment, and 3) do not indicate whether the employment was full-time. As such, the letters do not meet the requirements of 8 C.F.R. § 204.5(k)(3)(i)(B). Therefore, the Petitioner has not established eligibility for the EB-2 classification as an advanced degree professional and we withdraw the Director’s finding on this issue.

B. National Interest Waiver

The Petitioner proposes to continue his career in the United States as a logistics and shipping manager. He further states that he plans to start his own business in logistics to help companies with “international logistics, shipping, imports and exports, chartering, wholesaling, freighting, transportation of goods, and other related areas in the logistics industry.”

The first prong of the *Dhanasar* framework, 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.

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).

In her decision, the Director determined that the Petitioner's proposed endeavor is of substantial merit, and we agree. Turning to the national importance of his endeavor, the Director concluded that the Petitioner did not establish that his proposed endeavor has national importance.

On appeal, the Petitioner contends that the Director did not give due regard to his resume; business plan; letters of recommendation; and industry reports and articles. In addition, the Petitioner relies, in part, on his over 20 years of experience in logistics and supply chain management to establish the national importance of his proposed endeavor. However, the Petitioner's expertise and record of success in previous positions are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of his proposed work.

We have reviewed the staffing and revenue projections in the submitted business plan, which project that the company will directly employ 40 full-time and part-time employees within five years and, during that period, cumulatively pay wages of \$4.70 million and generate \$8.10 million in revenue. Importantly however, these employment and revenue projections are not supported by details showing their basis or an explanation of how they will be realized, nor do they demonstrate a significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Specifically, the record does not support that the direct creation of 40 additional full-time and part-time jobs in this sector or the expected revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework.

In addition, the Petitioner states in his business plan that he intends to "help to fuel small business growth in historically underutilized business zones" in the cities of [REDACTED]. The accompanying business plan indicates his company will open branches in "selected HUBZones" in these cities but does not further elaborate on these plans.² The Petitioner has not offered sufficient evidence that his business, which had not yet been incorporated or secured physical premises, will have offices in one or more HUBZones. Moreover, the Petitioner has not provided evidence that the areas where his company intends to operate are economically depressed, that it would employ a significant population of workers in those areas, or that his endeavor would offer a region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue.

We also reviewed the Petitioner's letters of recommendation. The authors praise the Petitioner's abilities in the logistics and supply chain management industry and the personal attributes that make him an asset to the workplace. While they evidence the high regard the Petitioner's professional acquaintances have for him and his work, none of them offer persuasive detail concerning the impact of his proposed endeavor or how such impact would extend beyond his clients. As such, the letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*.

² Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized business zones, with a goal of annually awarding at least 3% of federal contract dollars to HUBZone-certified companies annually. See "HUBZone Program," <https://www.sba.gov/federal-contracting/contracting-assistanceprograms/hubzone-program>.

Moreover, the Petitioner emphasized the importance of business development professionals in every type of business and submitted industry reports and articles discussing immigrant entrepreneurship and the benefits of international investment. However, 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. 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.* While the Petitioner proposes to work in an important industry or field, this is not necessarily sufficient to establish the national importance of the specific proposed endeavor. Further, the articles and reports do not discuss any particulars of the Petitioner’s proposed endeavor or its prospective impact rising 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 Petitioner has not established how providing his service as a logistics and shipping manager in the logistics and supply chain management field stands to sufficiently extend beyond his clients to impact the field more broadly at a level commensurate with national importance.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the remaining prongs, and we hereby reserve them.³ The burden of proof is on the Petitioner to establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

³ *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 alternate issues on appeal where an applicant is otherwise ineligible).