



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

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

In Re: 28513882

Date: SEP. 26, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a business and finance administrator, seeks classification as a member of the professions holding an advanced degree. *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 Petitioner had not established 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.

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. Next, a petitioner must then demonstrate they merit 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 USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

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

The Director's decision did not render a determination as to whether the Petitioner qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability. Instead, the decision only addressed the Petitioner's eligibility for a national interest waiver. Therefore, the issue for consideration on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus 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.²

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

In a letter of support, the Petitioner's counsel stated that the Petitioner founded his own company in Florida in 2018, and claimed it is engaged in the import and export of goods, trade, and sales. Counsel further stated that the Petitioner will serve as the company's chief financial officer (CFO) and that his duties will include the following:

- Providing leadership, direction and management of the finance and accounting team;
- Managing the processes for financial forecasting and budgets, and overseeing the preparation of all financial reporting;
- Advising on long-term business and financial planning; and
- Establishing and developing relations with senior management and external partners and stakeholders.

The Petitioner also provided a personal statement, where he stated that he will use his knowledge and experience to succeed in his proposed endeavor. Specifically, he stated:

I intend to work with import and export of goods, trade and sales. I'm sure I'm completely prepared to face this challenge, because I believe that few were born in this entrepreneurship life like I was and have had a lifetime of entrepreneurship like I have had, overcoming challenges, creating solutions and looking for ways to be productive and profitable. In addition, my growth in a developing country – Brazil – offered me difficulties that only I would have in a country like Brazil, and I believe that this will be an additional potential for the USA.

² Because the Petitioner has not demonstrated his eligibility for a national interest waiver on appeal, we need not remand the decision for the Director to determine whether he qualifies for the underlying EB-2 visa classification.

The Petitioner also submitted copies of his academic credentials, industry articles and reports, and letters of recommendation in support of his eligibility.

The Director determined that the Petitioner's initial filing did not establish that the proposed endeavor had substantial merit or national importance. The Director observed that the Petitioner did not provide specific insight as to what he intends to do in the United States, and requested a detailed description of the proposed endeavor so that the Director could evaluate his request for a national interest waiver under the *Dhanasar* framework. The Director further noted that although counsel stated that the Petitioner's business had been formed in Florida in 2018, no documentation relating to the business or its operations was submitted.

In response, the Petitioner submitted a new personal statement, and described his proposed endeavor as follows:

My proposed endeavor is to work in the United States as a Business and Finance Administrator, making established projects with organizations, and companies, amongst others. As I have done, I will continue to provide my expertise when it comes to planning, directing and coordinating accounting and other financial aspects of companies.

...

I will work as a Business and Finance Administrator for my own company, [REDACTED]
[REDACTED] As a Business and Finance Administrator I will plan, direct, coordinate accounting, investing, banking, insurance, securities, and other financial activities of a branch, office, or department of an establishment. In detail, I will be responsible for providing leadership, direction and management of the finance and accounting team, managing the processes for financial forecasting and budgets and overseeing the preparation of all financial reporting; Advising on long term business and financial planning; and establishing and developing relations with senior management and external partners and stakeholders.

My proposed endeavor includes utilizing my education and competent experience in managing financial accounts to help companies across the United states to meet their financial goals and improve their financial capacity with ripple effects on the whole economy.

Indeed, financial administration is a critical component in today's business environment, and it is in the national interest to be able to use the skills of an experienced professional like me to help the aforementioned company and in future other businesses in making educated business decisions with an accurate analysis of their finances and credit. . . .

The Petitioner further claimed that his proposed endeavor will "boost economic development and provide greater success to businesses," "contribute to the welfare of the employees, shareholders, customers and the community," and "help the government reach their goals."

The Petitioner also submitted an expert opinion letter as well as additional recommendation letters and articles and reports in support of his eligibility for a waiver of the job offer.

In denying the petition, the Director concluded that although the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate that the Petitioner's work as a business and finance administrator would impact the regional or national population at a level consistent with national importance. The Director noted that in addition to the general descriptions of his proposed duties, the Petitioner provided two different descriptions for his proposed endeavor. The Director noted that the Petitioner initially stated his intent to manage his own company in the United States in the capacity of CFO, but later indicated in the RFE reply that he desired to provide business and financial administration consulting services to U.S. companies. The Director determined that in addition to materially changing the original proposed endeavor, the Petitioner had not shown, to the extent the endeavor could be understood, that his endeavor had significant potential to employ U.S. workers, offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner asserts that the Director "failed to apply the correct standard of review under *Dhanasar*," and erroneously determined that the Petitioner made material changes to his proposed endeavor in response to the RFE. The Petitioner also asserts, through counsel, that the Director disregarded the evidence submitted, and provides a brief that emphasizes his qualifications as a business and finance administrator and entrepreneur.

In determining national importance, the relevant question is not the importance of the field, 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.

Preliminarily, we note that the Petitioner's proposed endeavor is material to whether the endeavor is of national importance. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see also Dhanasar*, 26 I&N Dec. at 889-90. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

We acknowledge the Petitioner's assertion on appeal that his RFE response did not materially change his proposed endeavor. While the record indicates that the Petitioner intends to provide business and financial administration consulting services, it remains unclear whether these services will be provided through his U.S. company, or by him individually as an independent consultant. Moreover, the record contains no documentation establishing the existence of the Petitioner's claimed U.S. company, and

the record is devoid of documentation, such as a business plan or sales forecast, that would demonstrate the proposed endeavor's potential to provide national or global implications within the field, employ U.S. workers, or otherwise have other substantial positive economic effects, particularly in an economically depressed area. Aside from generally asserting that he will provide business and financial administration consulting services, his specific proposed endeavor is uncertain, and we conclude that the Petitioner has not provided a specific or consistent proposed endeavor activity such that we can determine its national importance.

Throughout the record and in his personal statements, the Petitioner points to his background, education, and experience in his field.³ The Petitioner also provided several letters of support that discuss his financial administration capabilities and experience. The Petitioner's knowledge, skills, and experience in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under the second consideration of *Dhanasar*'s first prong. 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.

The Petitioner claims that his proposed endeavor has national importance because financial management services promote competition and contribute to effective cash flow and success of American businesses. Further, the Petitioner claims that the United States faces a significant talent shortage in the fields of accounting and finance and states that his services will help alleviate such a shortage. In support of his arguments, he offered information, including articles and reports, about the importance of financial management in business, the manner in which financial regulation relates to social welfare, the importance of competition on the U.S. economy, and the effect of COVID-19 on innovation. While these articles provide useful background information, they are of limited value in this matter, as the Petitioner's specific proposed endeavor remains unclear.⁴ Furthermore, 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." *Id.* at 889. Here, the Petitioner has not established how his individual employment in one or more of the roles identified would affect the U.S. economy more broadly consistent with national importance. Further, it is important to note that the shortage of financial and accounting professionals does not render his proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The record contains an expert opinion letter from a professor of finance at [redacted] University who concludes that the Petitioner's proposed work has national importance. But the professor does not base his conclusion on the national importance of the Petitioner's specific endeavor. Although he

³ While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

⁴ We further note that the Petitioner's counsel refers to these reports and articles throughout the record, asserting that the status of the U.S. financial sector impacts the U.S. people and its economy. On appeal, counsel emphasizes the Petitioner's experience in the field and generally asserts that his proposed endeavor will help alleviate the shortage of finance and accounting professionals and help the national economy by providing crucial financial consulting services to U.S. companies. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2 (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

recites the Petitioner's career history and accomplishments, and praises his success as an entrepreneur in Brazil, his findings stem from the significance of entrepreneurship, particularly in relation to business administration and financial consulting for U.S. companies engaging in business with Brazil and other Latin American companies. The letter therefore does not establish the national importance of the Petitioner's specific proposed U.S. work. See *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable"). The letter does not contain sufficient information and explanation of the Petitioner's proposed endeavor, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work in financial consulting offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

While the Petitioner's statements reflect his intention to provide valuable business and financial consulting services to his clients, he has not offered sufficient information and evidence to identify the proposed endeavor with specificity or otherwise demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. 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. See *Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company or clientele to impact his field, the business and financial sectors, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. 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 regional or national economy resulting from the Petitioner's financial consulting services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Finally, we note the Petitioner's submission of two of our non-precedent decisions on appeal, in which each petitioner sought classification as an individual of extraordinary ability and we sustained the appeals. First, these two petitioners sought employment-based first preference (EB-1) immigrant classification, which is different from the EB-2 immigrant classification sought by the Petitioner in the instant case. Second, neither decision was published as a precedent and, therefore, these decisions do not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. 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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

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