



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

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

In Re: 28053553

Date: SEP. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources and organizational development consultant, seeks employment-based second preference (EB-2) 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 although the Petitioner established his eligibility for EB-2 classification as a member of the professions holding an advanced degree, he did not demonstrate 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.

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, under section 203(b)(2) 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. 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

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).

- On balance, waiving the job offer requirement would benefit the United States.²

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. Therefore, the sole issue to be addressed is whether the Petitioner has established that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest.

The Petitioner worked as a human resources manager and consultant between 2013 and 2021. The record reflects that in 2020 he co-founded a human resources consulting company, [REDACTED] providing services to small and medium-sized businesses (SMBs) in Colombia. He seeks to establish a human resources consulting company in Florida for which he will serve as general manager.

In denying the petition, the Director addressed all three prongs of the *Dhanasar* analytical framework, and concluded that the Petitioner did not demonstrate that he meets any of those prongs. On appeal, the Petitioner maintains that the evidence was sufficient to demonstrate that he meets all three prongs under the *Dhanasar* framework and otherwise warrants a national interest waiver as a matter of discretion. For the reasons discussed below, we agree with the Director's conclusion that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. The Proposed Endeavor

At the of filing in December 2021, the Petitioner provided a personal statement describing his proposed endeavor as follows:

I aim to expand [REDACTED] my human resources and organizational development consultancy company in Colombia, to the United States, providing consulting services focusing primarily on SMBs in Florida then expanding to throughout the U.S., to achieve organizational development, growth, increase productivity, and improve employee well-being.

In response to the Director's request for evidence (RFE), the Petitioner submitted a business plan that indicates that the Petitioner, through his proposed endeavor, "will devise and direct organizational and strategy plans, manage employee budgets, structure clients' organizational charts, oversee the recruitment process, plan training and development initiatives, and review employee performance."

B. Substantial Merit and National Importance

To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that his proposed endeavor has both substantial merit and national importance. This prong of the *Dhanasar* framework 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,

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

science, technology, culture, health, or education. The record supports the Director's determination that the Petitioner's proposed endeavor to assist companies with optimizing their human resources management and planning has substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.³ The business plan for the Petitioner's proposed company includes industry and market analyses, business strategies, financial forecasts, a description of company management and personnel, and a summary of the company's expected "National-Level Impact." According to the business plan, the company will contribute to "sustainable growth of the U.S. economy" by improving the efficiency and profitability of SMBs, paying taxes, generating direct and indirect jobs, and allowing the Petitioner to transfer his knowledge to individuals in the United States. The Petitioner states that the expansion and growth of companies assisted by his proposed endeavor "will create ripple effects" since "[w]hen small businesses thrive, it has an unrivaled ripple effect—jobs are created, communities are strengthened, and the whole country benefits."

The business plan forecasts first year revenues of over \$480,000, increasing to approximately \$2.1 million in year five, with expected profits of \$131,964. In addition, the included personnel plan projects that by year five the company will employ the Petitioner as general manager along with 30 additional employees, with total payroll expenses of approximately \$1.6 million. The business plan also includes the company's projected payroll and income tax payments and predicts that the business could generate 64 indirect jobs, based on national job multipliers published by the Economic Policy Institute.

In support of his claim that he can satisfy the first prong of the *Dhanasar* analytical framework, the Petitioner provided, both before the Director and on appeal, copies of articles from business, industry, and government publications discussing the human resources management field, the industrial and organizational psychology field, the impact of poor human resource policies on companies and employees, and the increasing U.S. mental health crisis. In response to the RFE, the Petitioner submitted an expert opinion letter from an associate professor at [REDACTED] College, who addresses his eligibility for a national interest waiver under the three prongs of the *Dhanasar* framework.

The Director determined that the record consisted primarily of broad assertions regarding Petitioner's professional skills, past achievements, and the industry in which he intends to operate, but lacked evidence corroborating how the specific proposed endeavor would have broader implications in the field commensurate with national importance. On appeal, the Petitioner maintains that the Director did not consider how "[his] work has and will continue to have a broader impact boosting the nation's economic welfare by supporting the growth of SMBs."

The Petitioner also emphasizes his past success in the field, stating that "[g]iven his education and experience, [he] has the expertise to increase any SMB's success by overseeing recruiting, hiring, training, and delivering tailored work systems and evaluations, bettering [the] work environment, with a honed understand[ing] of how work culture and human psychology impact the productivity of the

³ While we do not discuss each piece of evidence individually, we have reviewed and considered all evidence submitted in support of the Petitioner's claim that the proposed endeavor has both substantial merit and national importance.

workforce.” The Petitioner contends that “[i]t is thus in the national interest and of national importance that U.S. businesses have the tools and sources for growth, one of them being the indispensable help of seasoned professionals such as [himself].”

When evaluating 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.

Here, to a significant extent, the Petitioner’s business plan, personal statement, and other supporting evidence (such as articles and industry reports) focus on the importance of the Petitioner’s industry and profession. Evidence that relates to the importance of the human resources and organizational development consulting industry, and the need for persons who possess expertise in these fields, tend to support the Petitioner’s claim that his endeavor has substantial merit. However, such evidence does not demonstrate how the Petitioner’s specific proposed endeavor stands to impact the broader field or otherwise establish its national importance.

In his personal statement, the Petitioner has placed considerable emphasis on his prior success as a human resources manager and consultant in Colombia. The record contains supporting documentation of his experience, including letters from his business partner and colleagues. While important, the Petitioner’s expertise acquired through his employment relates to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar*’s first prong. A determination regarding the claimed national importance of a specific proposed endeavor cannot be inferred based on the Petitioner’s past achievements, just as it cannot be inferred based on general claims about the importance of a given field or industry.

With respect to the submitted expert opinion letter the Petitioner provided, we observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int’l*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national’s eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

Here, much of the content of the expert opinion letter is lacking relevance to the issue at hand. Specifically, the letter, like the evidence discussed above, focuses on the importance of the Petitioner’s industry, occupation, and past professional achievements, rather than addressing how the specific proposed endeavor would satisfy the national importance element of the first prong of the *Dhanasar* framework. The writer offers little or no analysis of the specific proposed endeavor and its prospective

substantial economic impact, and does not otherwise address the implications of the proposed endeavor on the larger field of human resources and organizational development consulting.

The expert opinion letter the Petitioner provided cites to several industry reports, regarding the human resources and organizational development sector and projected employment growth in the field. The professor states that the Petitioner, through his company, “will indisputably benefit U.S. employers and the U.S. economy as a whole.” However, she does not indicate how the business plan supports a determination that the proposed endeavor has significant potential to employ U.S. workers or has other substantial positive economic effects, or how it has national implications within the field. Rather, most of the letter’s discussion of the first prong of the *Dhanasar* analysis focuses on the national importance of the industry in which the Petitioner intends to operate.

Turning to the submitted business plan, although it reflects that the Petitioner’s company will hire up to 30 additional workers within five years, the record does not contain sufficient evidence to demonstrate that the area where it will operate is economically depressed, that it would employ a significant population of workers in the area, or that the specific proposed endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, trade, or related tax revenue. On appeal, the Petitioner states that his endeavor “will have other substantially positive economic effects, especially in economically depressed areas,” in reference to the State of Florida. However, he does not elaborate on, or offer further support for, this claim.

The record does not support that the creation of 30 additional jobs in the human resources and organizational development sector, or the expected tax 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. The Petitioner asserts that the impact of the company’s activities will result in “ripple effects” with social and economic benefits for “the whole country.” He has also stated that the proposed endeavor will result in “sustainable growth of the U.S. economy.” However, the burden is on the Petitioner to establish that the economic effects of his proposed endeavor are “substantial.”

The Petitioner did not provide specific plans, projections of indirect economic benefits, or other sufficient evidence to explain how his specific company activities will have broader implications in the field that rise to the level of national importance, or that the company’s activities would impact the field beyond the company and its clients. As such, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s proposed endeavor would reach the level of “substantial positive economic effects” as contemplated by *Dhanasar*. For the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

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.⁴

⁴ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that “courts and agencies are not required to make findings on

III. CONCLUSION

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

issues in 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).