



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 2828244

Date: SEP. 28, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a civil engineer, seeks employment-based second preference (EB-2) immigrant 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 record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 USCIS may, as a

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

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record reflects that determination.²

The remaining issue to be determined 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. The Director determined that the Petitioner's endeavor has substantial merit and is of national importance. However, the Director determined that the record did not demonstrate that the Petitioner is well positioned to advance the proposed endeavor, and that on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.³

A. Substantial Merit and National Importance

The Petitioner proposes to work as a civil engineering project manager for his civil engineering services company, [REDACTED] in Florida. The Petitioner's professional plan states that he would participate "in the development of construction projects" and oversee "its organization, programming, budget, and implementation, providing substantial socio-economic benefits for construction companies and [U.S.] citizens." His proposed endeavor "is to provide consultation to other professionals, developers, and construction managers to allow them to bring better results to their clients." The business would provide "innovative technologies" and "eco-friendly strategies to minimize the discharge of pollution, use recyclable and renewable materials in building projects, and minimize energy consumption and waste production." The Director determined that for the first prong of the Dhanasar framework, the Petitioner's endeavor has substantial merit and national importance. The Director did not provide reasoning for the findings.

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.

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).

² To demonstrate he is an advanced degree professional, the Petitioner submitted his diploma for a titulo de civil engineer from Universidad [REDACTED] in Brazil in 2008, his academic transcripts, an academic evaluation, and letters from individuals who contracted the Petitioner as a civil engineer. The record demonstrates that he holds the foreign equivalent to a U.S. bachelor's degree in civil engineering and at least five years of progressive experience in his specialty. See 8 C.F.R. § 204.5(k)(3).

³ While we may not discuss every document submitted, we have reviewed and considered each one.

Matter of Dhanasar, 26 I&N Dec. at 889. We agree with the Director that the record shows that the Petitioner's proposed endeavor as an entrepreneur and a civil engineer project manager for his business is of substantial merit. However, upon de novo review, we do not agree with the Director's determination that the 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 Matter of Dhanasar, 26 I&N Dec. at 889. 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. Further, 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's professional plan describes his desire "to improve the construction industry and infrastructure system by helping construction companies realize safe and innovative projects." The Petitioner asserts the business will "develop innovative technologies to contribute to improving the U.S. [c]onstruction [i]ndustry, introducing these new projects to other engineers, transferring [his] knowledge, and training to [sic] new generations of professions, rendering the [United States] more competitive in the international market." Also, the business would be focused on the environment by using eco-friendly strategies in building projects to minimize pollution, energy consumption, and waste production. The Petitioner's business plan generally mentions that the business will "be particularly focused on managing projects in coastal areas of Florida in the context of climate change." The Petitioner asserts his endeavor will contribute to U.S. economic growth and human development by creating investment opportunities in the construction industry, creating jobs, generating income, and developing housing and infrastructure that will unite people.

However, the documentation in the record does not provide insight as to how the Petitioner intends to impact the fields of civil engineering and construction, the economy, or the environment more broadly as an individual working as a civil engineering project manager for his civil engineering services company. The Petitioner has not provided corroborating evidence to support his claims that his business' activities stand to provide substantial economic and environmental benefits to Florida or the United States. The Petitioner's claims that his civil engineering services business will benefit the Florida and U.S. economy and environment has not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide his claimed economic and environmental benefits to Florida or the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that his proposed job duties as a civil engineering project manager for his business would impact the civil engineering and construction industries more broadly, rather than benefiting his civil engineering business and his proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The Petitioner cites his intention to share his skills with colleagues to contribute to the improvement of civil engineering techniques and the construction industry. 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. *Matter of Dhanasar*, 26 I&N Dec. at 893. Likewise, the Petitioner has not established that sharing his skills with colleagues rises to the level of having national importance.

The record includes two expert opinions providing analyses of the national importance of the Petitioner's proposed endeavor. The experts opine that the Petitioner's proposed endeavor of being the project manager of his civil engineering business has national importance on the construction industry. The opinions focus on the growing demand for civil engineers and project managers, and the importance of the civil engineering and construction fields, particularly the importance of using energy-efficient products and limiting the use of chemicals for construction projects. The opinions find that the Petitioner's business' contributions to the construction industry will provide positive economic and societal benefits to the United States by supporting U.S. government infrastructure initiatives and environmental sustainability. However, the opinions do not focus on the Petitioner's specific endeavor and how it will have a potential prospective impact on the U.S. economy, or in the fields of the proposed endeavor of civil engineering and construction. Simply stating that his work would support important industries, the U.S. economy, and the environment are not sufficient to meet the "national importance" requirement under the *Dhanasar* framework.

To demonstrate the national importance of his proposed endeavor, the record also includes industry reports and articles. The reports and articles relate to the construction industry, infrastructure workers' ability to work during COVID-19, rising sea levels, civil engineers adapting to climate change, the shortage of civil engineers, the importance of civil engineering education, and the economic contributions of immigrant scientists and engineers. We recognize the importance of the civil engineering and construction industries, particularly in light of climate change and rising sea levels, and their related careers, as well as the significant contributions from immigrants who have become successful engineers and entrepreneurs. However, merely working in the civil engineering and construction fields or starting a civil engineering services business to support these industries is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See *id.* at 889. The industry reports and articles submitted do not discuss any projected economic or environmental impacts specifically attributable to the Petitioner's proposed endeavor.

The Petitioner does not demonstrate that his proposed endeavor extends beyond his business and his future clients to impact the field or any other industries or the U.S. economy and environment more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as the project manager of his proposed civil engineering services business offers original innovations that contribute to advancements in his industry or otherwise has broader implications for his field. While the Petitioner's description of his endeavor is aspirational in the scope of its impact on the environment and the economy, he does not explain or provide evidence demonstrating how his business will "develop innovative technologies" to "improve the construction industry and infrastructure system." The Petitioner makes general assertions relating to his business being environmentally friendly; however, he does not provide details of how his business intends to help combat pollution and adapt its work to rising sea levels. The

economic, environmental, and societal benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed business' civil engineering work and the claimed economic results.

We withdraw the Director's finding on this issue.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether a petitioner is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 892-93.

The Director determined that the Petitioner did not establish that he is well positioned to advance his proposed endeavor. While acknowledging that the Petitioner's academic achievements and subsequent trainings show that he has been educated in his field of civil engineering, the Director noted that the Petitioner's education in his field alone is not sufficient to demonstrate that he is well positioned to advance his proposed endeavor. The Director found that the record did not support the Petitioner's claims that he had prior experience as an entrepreneur as the owner of his civil engineering consulting business in Colombia. The Director also reviewed the business plan noting that while it provided a plan for the business, it did not show how the Petitioner expected to fund the business and its indicated expenses. The Director pointed out that letters of recommendation from recent clients of his new business, [REDACTED] show their working relationship during the business' first year of operation; however, the letters and the record did not support projections stated in the business plan relating to the business' profits and hiring employees.

The Petitioner argues on appeal that "[t]he basis of the appeal is an erroneous application of the law and regulations . . . to the facts of the present case." The Petitioner argues that the Director did not correctly consider the evidence, including documentation showing his academic achievements, his 14 years of professional experience in the construction industry, and his work as project manager of his current business; his personal statements; the business plan; two expert opinion letters; and letters of support. The Petitioner argues that the evidence considered together shows by a preponderance of the evidence that he possesses the academic skills, professional experience, and notable progress required to succeed in the proposed endeavor.

Upon de novo review, we agree with the Director's determination that the record does not demonstrate that the Petitioner is well positioned to advance the proposed endeavor. The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

The record includes the Petitioner's resume, personal statements, and a business plan claiming that he is well positioned based on his prior professional experience as a civil engineer, including his ownership of a civil engineering business, [REDACTED] in Colombia from 2016 to 2021. However, the Director found that the record did not support with substantive evidence the Petitioner's claims that he had prior experience as an entrepreneur of [REDACTED]. The Director also found that documentation in the record contradicted the Petitioner's assertions that he owned and managed the business during the claimed time period, 2016 to 2021.

The Petitioner argues on appeal that the Director should not have focused solely on his "past experiences, but also his future plans and prospects." The Petitioner asserts that Director focused solely on the success of the Petitioner's previous company within the civil engineering field, instead of considering "all the prospective benefits that his proposed endeavor as a Project Manager through his new U.S. [c]ompany may have in the United States." The Petitioner argues that Dhanasar does not mention that the Petitioner is required to demonstrate "success within the field as a whole." (emphasis omitted). He argues that the Director's reasoning is similar to the requirement of exceptional ability under 8 C.F.R. § 204.5(k)(2), which would require that he "demonstrate a past record that shows a level of achievement beyond that normally encountered in the field" and that he has already demonstrated meeting the requirements of the EB-2 classification as an advanced degree professional and is not required "to demonstrate a past record that shows a level of achievement beyond that normally encountered in the field beyond USCIS's consideration of the non-exhaustive list of factors suggested for evaluation of this prong by the AAO in Matter of Dhanasar [sic]."

The Petitioner's arguments are misplaced. The second prong shifts the focus from the proposed endeavor to the individual and considers factors including a petitioner's record of success in similar efforts. Matter of Dhanasar, 26 I&N Dec. at 892-93. The Petitioner's assertions that the Director should have focused more on "the prospective benefits" of the proposed endeavor instead relate to the first prong of Dhanasar. While the factors of Dhanasar's second prong include consideration of a petitioner's model or plan for future activities, this speaks to whether a petitioner has developed a plan for the future of the proposed endeavor. Moreover, a petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

For the Dhanasar second prong, a petitioner should submit evidence to document past achievements and corroborate projections related to the proposed endeavor to show that the petitioner is well-positioned to advance the endeavor.⁴ Unsubstantiated claims do not meet a petitioner's burden.⁵ The Petitioner asserts in his resume, his personal statements, the business plan, and on appeal that his 14 years of professional experience show that he is well positioned to advance his endeavor. However, he did not provide evidence to support his claims of owning and operating a civil engineering business from 2016 to 2021. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376.

⁴ See generally 6 USCIS Policy Manual, F.5(D)(1), <https://www.uscis.gov/policymanual>.

⁵ See Matter of Chawathe, 25 I&N Dec. at 376; see generally 6 USCIS Policy Manual, *supra*, at F.5(D)(1).

Furthermore, as pointed out by the Director, evidence in the record contradicts the Petitioner's claims of owning a business in Colombia from 2016 to 2021. The Petitioner's 2019 to 2020 Australia tax documentation indicates the Petitioner was a resident of Australia during that time period and earned income for "a building and other industrial cleaning services business" in Australia. Also, the record shows that the Petitioner entered the United States on October 20, 2020, and remained in the United States when he filed this petition in February 2021. Therefore, the Director's decision stated, "No evidence was provided to demonstrate how the [Petitioner] was maintaining his company and job as a civil engineering consultant within the country of Colombia while living abroad [sic] in Australia and the United States." The Petitioner's appeal does not provide an explanation or evidence to resolve these inconsistencies in the record. Instead, the Petitioner argues that the Director should not have focused solely on his "past experiences, but also his future plans and prospects." These unresolved inconsistencies in the record cast doubt on the credibility of the documents submitted. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (a petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies).

The Petitioner also indicates that he worked as an engineer for building projects in Colombia. While the record includes employment verification letters attesting to the dates of his employment as an engineer for those projects, the letters do not include details of his job duties. See 8 C.F.R. § 204.5(g)(1) (detailing the requirements of letters submitted as evidence of qualifying experience or training). The Petitioner provided his own statements explaining his job responsibilities and his photographs of the projects. However, the record does not include evidence corroborating his claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient documentary evidence supporting his claimed prior work experience as a civil engineer for construction projects, the Petitioner has not demonstrated by a preponderance of the evidence that he has the claimed prior experience to make him well positioned to advance his proposed endeavor.

Contrary to the Petitioner's argument that the Director's decision focused solely on his past work experience, the Director did consider a letter of recommendation from the Petitioner's current business colleague. Although the letter shows the Petitioner having a working relationship with [REDACTED] since April 2021, the Director pointed out that the Petitioner did not submit evidence demonstrating the success of his new business as claimed in the business plan dated November 2022. For instance, the Petitioner did not provide evidence of the business' claimed profits or hiring of two U.S. employees in its first year.

The record includes another letter of recommendation from his current business' client, [REDACTED] stating their having a business relationship since June 2022, which we note is after the date of filing this petition. As noted above, a petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). Evidence of a business relationship developed after the filing of the petition cannot be used to establish eligibility.

The Petitioner argues that the Director "did not apply the correct standard of review" when analyzing the business plan. He points out that the business plan is dated in November 2022, after the date of filing the petition, and the Director "erred in analyzing the evidence under inappropriate reasoning" since the Director pointed out that the Petitioner must establish eligibility at the time of filing. He argues that the business plan detailing his civil engineering business was requested by the Director in

a request for evidence notice and is not required to be dated prior to the date of filing the petition. However, the Petitioner mischaracterizes the Director's analysis of the business plan. While the Director's decision points out that the business plan is dated after the date of filing the petition and that the Petitioner must establish eligibility at the time of filing, the Director stated, "we will discuss the information contained in [the business plan]" and analyzed the claims in the business plan relating to financial and employment projections. Therefore, the Petitioner's assertion that the Director did not apply the correct standard of review in analyzing the business plan is without merit.

The Petitioner stresses on appeal that he established his business in [REDACTED] 2021, prior to filing this petition in April 2021, and states, "According to the law, the [Petitioner] had to prove that he had established the company BEFORE the initial filing, and it has been proven." We note that a petitioner proposing to establish a business is not required to establish the company prior to filing the petition. Instead, an entrepreneur petitioner's ownership interest in a U.S. entity may have probative value in demonstrating the petitioner is well positioned to advance the endeavor.⁶ Although the Petitioner provided evidence showing he incorporated a company in Florida just prior to filing the petition, this is not the only factor to consider when determining if he is well positioned to advance his proposed endeavor.

The Petitioner further argues that the Director did not consider the two expert opinions submitted with the petition. However, the Petitioner is incorrect since the Director did consider the opinions in the decision stating,

[A] claim to well positioning within the expert opinion letters provided is that the [Petitioner] ran his own company as a consultant within the civil engineering industry for the years of 2016 to 2021. No evidence has been provided to demonstrate the [Petitioner] being self-employed or evidence to demonstrate the existence of a company by the name of: [REDACTED] that was owned by the [Petitioner] in Colombia per letters within the filing.

The opinions are based in part on the Petitioner's prior experience in the field, including his work as an engineer for building projects in Colombia and with his own company in Colombia. However, as explained above, other than the Petitioner's explanations of his prior work experience, the record does not include independent, probative evidence corroborating his claimed work experience. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. See *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988); 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, the reliability of the expert opinions is in question since they are based on the Petitioner's uncorroborated assertions.

Because the documentation in the record does not sufficiently establish the Petitioner is well positioned to advance the proposed endeavor as required by the second prong of the Dhanasar framework, he has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the

⁶ See generally 6 USCIS Policy Manual, *supra*, at F.5(D)(4).

Petitioner's remaining appellate arguments regarding his eligibility under Dhanasar framework. 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 second prong of the Dhanasar analytical framework, we find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.