



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

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

In Re: 18038375

Date: SEP. 2, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a general and operational manager, seeks second preference 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 EB-2 classification. *See* 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 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.

On appeal, the Petitioner asserts that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s 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.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.³

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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 agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

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 claimed:

Thru the experience acquired in Brazil from years in Business Administration (ie a large chain of restaurants), [he] is indispensable to enrich the American food industry. With his professional experience as an administrator, coupled with the vast experience of years in restaurants in Brazil, and added to the best technology that the USA offers, it will be possible to create a strong link of solid partnerships with other companies, fostering the American market, developing a gradual growth plan that will generate direct and indirect jobs for the American people.

Besides, he intends to always practice a fair price with high-quality products, creating a relationship of confidence with the client, based on quality, efficiency, and honesty.

According to research in BLS – Bureau of Labor Statistics, the job openings in the area of [redacted] where he intends to start his life in the U.S., are increasing.

The Petitioner also submitted a business plan “envision[ing] the opportunity to open a restaurant in the mold of his existing ones, with delicious Brazilian food and the famous barbecue that attracts not only Brazilians, but meat lovers in general.” In addition, the business plan claims that “the idea of expansion to America is to open several units in the [redacted] area and later to extend to [redacted]”

In response to the Director’s request for evidence, the Petitioner provided a statement indicating:

[D]ue to the knowledge and experience in the restaurant business, I am sure we can build a solid restaurant, with a differentiated management style and innovative ideas, generating employment and opportunities, since only then you can have a success case, especially in the current situation that we have lived due to COVID-10 where unemployment and companies foreclosures have been increasing every day.

I have a proposal from the corporation for the opening of a unit of [redacted] in the region of [redacted] together with the company [redacted] a

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

Brazilian company that has interest in investing in the project. We already have locations and stores prospected and the project in attachment. From January to March of this year I performed a consulting service for the company [redacted] owner of the restaurant [redacted] located in [redacted] where due to my experience in consulting and administration in different restaurants in Brazil, I was able to make important changes in the administration and processes of the restaurant and including it has been of great importance to overcome the challenges of COVID-19.

The Petitioner also provided an updated business plan and documentation relating to potential investors. On appeal, the Petitioner maintains:

In the United States, [he] intends to open a unit of the restaurant [redacted] in the region of [redacted]. He has already locations and stores prospected, with some companies wanting to invest in his entrepreneurial project.

To this end, [he] has a partnership proposal to open a unit of the restaurant specialized in Brazilian barbecue [redacted] in the [redacted] region, having as a partner the company [redacted], a Brazilian company interested in investing in the USA, willing to invest in \$150,000 for the first restaurant star.

The Director determined that the Petitioner demonstrated the substantial merit of his proposed endeavor, and the record supports that conclusion. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance of his proposed endeavor.

On appeal, the Petitioner stresses that “[e]ntrepreneurship is among the most vibrant and important parts of the economy” and “[e]ntrepreneurs throughout modern economic history have been disproportionately responsible for truly radical innovations.” 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 *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of his opening a restaurant in the [redacted] Florida area rather than the national importance of restaurant entrepreneurship or entrepreneurship overall. 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.

The Petitioner also emphasizes that his “experience under consideration fulfills this category of professionals” and “[h]is proposed endeavor offers his intimate knowledge in the managerial and entrepreneurial fields, where, with his extensive training and hands-on experience, he is highly qualified to run a business that will surely contribute to the development of the community he is in.” The Petitioner’s experience and abilities 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.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *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. Although the Petitioner discusses "the riches of Brazilian food," he has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of his specific 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. *Id.* at 893. Here, the record does not show how opening and operating a restaurant in [redacted] Florida stands to sufficiently extend beyond his own company and clientele, to impact the restaurant industry 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 offers substantial positive economic effects for our nation or has significant potential to employ U.S. workers. He has not shown that his restaurant's future business activity and staffing levels stand to provide substantial economic benefits to specific regions or the United States, as contemplated by *Dhanasar*, *Id.* at 890. In fact, none of his business plans discuss job creation or indicate the number of workers required at the restaurant, and they claim that his restaurant will initially earn a profit of \$35K per month with an eventual profit margin of \$80K per month. The Petitioner, however, did not offer any relevant supporting evidence to corroborate his claims in the business plans and to substantiate that his company's future business activity stands to provide substantial economic benefits to specific regions or the United States rather than limited to the [redacted] Florida area. Moreover, the Petitioner did not establish how monthly profits margins between \$35K - \$80K constitute "substantial positive economic effects" consistent with *Dhanasar*.

In addition, the Petitioner has not offered evidence, for example, that the area in [redacted] Florida where his restaurant would be located is economically depressed, that he would utilize a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner established that any increases in employment or investment attributable to his restaurant's operations stand to substantially affect economic activity or tax revenue in a state, region, or nationally. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

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.

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.