



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

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

In Re: 28092498

Date: SEP. 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a chief executive officer, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established 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, petitioners must 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. In addition, petitioners must show 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>1</sup>, grant a national interest waiver if:

- 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.

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<sup>1</sup> 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).

## II. ANALYSIS

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner's initial cover letter stated:

The Petitioner intends to continue using his business management and CEO expertise to build a fine dining Japanese Brazilian restaurant called [redacted]. The plan is to become a franchise business after the 3rd unit implementation in Florida. Florida is a state where economy is diverse and attracts global business, combined with a government that is in favor and encourages business and development, it also has increasing rates of job creation and population growth.

Further, the Petitioner submitted a "Personal Plan & Statement" indicating:

I intend to continue using my expertise and knowledge to work as a CEO in the United States, where I will start a Japanese Cuisine Business in Florida, which often suffer from a lack of investments. To do this, I intend to launch my own Oriental Restaurant in [redacted] where I will also employ American citizens who can help me to attend our customers, as well as run my international cuisine establishment. In fact, I have plans to successfully expand my business by licensing the use of the brand, thus opening new restaurant units in [redacted] and, in future, in [redacted]

....

After approval of the petition, I intend to start the project by opening a restaurant in [redacted] and gradually expand the development to other strategically positioned units, such as [redacted] (also in Florida), [redacted]

Thus, through the opening and expansion project of [redacted] USA in the [redacted]-FL region, I intend to generate jobs, collect taxes, and positively impact the national economy.

In response to the Director's request for evidence, the Petitioner's cover letter claimed:

... [The Petitioner] has the ability to lead [redacted] USA to become a distinguished Japanese Restaurant, serving primarily the [redacted] metropolitan area, with the potential to expand its operations to multiple states in the country, being recognized by the excellence of its services in the Japanese Cuisine. [The Petitioner] has extensive professional experience in management control, monitoring, hiring and training of salespeople, finance, purchasing, product research, strategic planning, monitoring of results, skills that strengthen him to be a differentiated and capable professional to make [redacted] USA a great success in Florida and in the U.S. ...

... [The Petitioner] confirmed his intentions to work with business and exquisite cuisine by starting his own company, a Japanese Restaurant named [redacted] to apply all his extensive knowledge acquired in business management, controlling,

monitoring, and correcting sales force, in a self-funded company based in [redacted] Florida. The purpose is to continue working in his career in the business management through an entrepreneurial approach, as CEO . . . .

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit and national importance. However, because the record does not support the Director's finding relating to the national importance aspect, we will withdraw the Director's decision regarding the first prong, discussed below.

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. Although he provided evidence relating to a wide range of topics, such as the overall restaurant industry, Florida's business climate, impact of restaurants to local economies, importance of small businesses, and popularity of Japanese food and restaurants, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of owning and operating [redacted] Florida, as well as expansion to two other locations, rather than the importance of particular industries or fields.<sup>2</sup> 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.

The record also contains an opinion letter from [redacted] who claimed the Petitioner's proposed endeavor meets all three elements under the *Dhanasar* decision. As it relates to the national importance aspect, the letter discusses the food industry, the restaurant industry, consumer spending, and food delivery without explaining the national importance of the specific, proposed endeavor of owning and operating [redacted] Moreover, although the letter asserts that "[h]aving [the Petitioner] as a seasoned Chief Executive in the United States could highly benefit the American population," the letter does not further elaborate and explain how the Petitioner's restaurant in [redacted] Florida, as well as future locations in [redacted] Georgia and [redacted] New York, would be nationally important. 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. *Dhanasar*, 26 I&N Dec. at 889. Here, the letter does not demonstrate how the Petitioner's proposed endeavor largely influences the field and rises 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 the field more broadly. *Id.* at 893. Likewise, the record does not show through supporting documentation how the restaurant stands to sufficiently extend beyond its customers, to impact the restaurant industry or the U.S. economy more broadly at a level commensurate with national importance.

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<sup>2</sup> The Petitioner's arguments and evidence relate more to the substantial merit aspect of the proposed endeavor rather than the national importance part.

In addition, under the national importance element, the Petitioner emphasized “his visionary ideologies, performance-driven mindset, and extensive management experiences with his Management background” and “outstanding achievements, and record of accomplishments.” Further, [redacted] letter referenced the Petitioner’s “expertise in managing, controlling, finance, and shopping in the food market, strategic planning, and product research.” However, the Petitioner’s experience, skills, and abilities in his field 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 he proposes to undertake has national importance under *Dhanasar*’s first prong.

Finally, the record contains the Petitioner’s business plan for [redacted]. However, the Petitioner did not establish how the business plan’s claimed financial and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation.<sup>3</sup> The business plan does not make revenue projections; instead, it references “Break-Even” of \$55,000; “Profitability” of \$55,000 with a net profit of \$1,100, \$70,000 with a net profit of \$10,500, and \$85,000 with a net profit of \$20,400; and “Annual Billing” of \$360,000, \$480,000, and \$600,000 for years 1 through 3, respectively. Here, the Petitioner did not show how these figures translate into “substantial positive economic effects.” *See Dhanasar*, 26 I&N Dec. at 890.

Similarly, although the business plan claims the creation of 8 jobs in year 1 to 15 jobs in year 3, the Petitioner did not establish that such future staffing levels would provide substantial economic benefits to [redacted] Florida region or the U.S. economy more broadly at a level commensurate with national importance. While he submitted evidence indicating that the [redacted] Florida region is located in a distressed area and classified as an opportunity zone, the Petitioner did not demonstrate the significance of the creation of 8 – 15 jobs to the unemployment rate or how such jobs would offer substantial positive economic effects for the [redacted] Florida area or our nation.

Because the documentation in the record does not establish the national importance of the Petitioner’s proposed endeavor, we withdraw the Director’s favorable finding for the first prong of the *Dhanasar* precedent decision. As such, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his qualification under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.<sup>4</sup>

### III. CONCLUSION

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

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<sup>3</sup> The business plan makes projections only for the [redacted] Florida restaurant.

<sup>4</sup> *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *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 applicants do not otherwise meet their burden of proof).

**ORDER:** The appeal is dismissed.