



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

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

In Re: 29339731

Date: APRIL 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of information technology (IT) education, seeks classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. *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 Texas Service Center denied the petition, concluding that the Petitioner had not established that the Petitioner qualified for EB-2 visa classification and that a discretionary 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. Section 203(b)(2)(B)(i) of the Act. 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.

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). *Dhanasar* states that U.S. Citizenship and Immigration

Services (USCIS) may, as matter of discretion,<sup>1</sup> grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen 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 the noncitizen 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 noncitizen. To determine whether the noncitizen 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, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen 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 noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors 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.

## II. ANALYSIS

The Petitioner proposes to work in the United States as an entrepreneur in the IT education field. The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he qualified for the underlying classification. The Director also found that the Petitioner failed to establish a discretionary waiver of the required job offer, and thus of the labor certification, would be in the national interest.

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<sup>1</sup> See also *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

## A. EB-2 Classification

The Director concluded that the Petitioner did not qualify for the EB-2 classification as an advanced degree professional nor as an individual of exceptional ability. The Director determined that the evidence submitted did not establish that the Petitioner has at least five years of progressive post-baccalaureate experience, and that the record lacked evidence that the Petitioner meets at least three of the six criteria found at 8 C.F.R. § 204.5(k)(3)(i).

On appeal, the Petitioner argues that the Director erroneously denied the petition. The Petitioner further contends that the Director did not apply the proper standard of proof and instead imposed a stricter standard. The Petitioner also highlights the evidence submitted in support of the petition and on appeal to underscore the sufficiency of the submitted evidence. He maintains that the evidence demonstrates that he meets at least three of the six criteria, is eligible as an individual of exceptional ability, and that his proposed endeavor is of national importance.

The resolution of the issues pertaining to the Petitioner's eligibility for a waiver of the job offer requirement, and thus of a labor certification, under the *Dhanasar* analytical framework are dispositive of this appeal. For that reason, we will reserve consideration of the Petitioner's eligibility for the requested EB-2 category. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

## B. Substantial Merit and National Importance

The Director acknowledged that the Petitioner's proposed endeavor has substantial merit. The Director determined, however, that the Petitioner did not establish the proposed endeavor is of national importance, that he is well-positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner disagrees with the Director's determination and claims that his business plan and industry reports demonstrate the national importance of his proposed endeavor. 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. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

As previously noted, the first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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 record shows that the Petitioner's proposed endeavor is to operate his business, [REDACTED] [REDACTED] that provides IT related training and online courses. He claims that he will make a significant impact to the U.S. economy by offering educational courses, improving workforce skills, and making a positive contribution. He further asserts that the courses and training

programs he intends to offer have the potential to attract individuals from diverse backgrounds, including those from disadvantaged areas, thus indirectly providing economic benefits to those regions.

In denying the petition, the Director concluded that the submitted evidence was insufficient to demonstrate that the Petitioner's proposed endeavor is nationally important. The Director also determined that the Petitioner did not establish his proposed endeavor has broader implications, has significant potential to employ U.S. workers, and that it would broadly enhance societal welfare or cultural or artistic enrichment. Furthermore, the Director found that the Petitioner did not provide sufficient evidence to confirm whether his proposed endeavor will have substantial positive economic effects, particularly in an economically depressed area as contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner contends that his business plan, industry reports, and articles collectively showcase his proposed endeavor's "potential reach and impact." He emphasizes his extensive entrepreneur experience in the IT field and asserts that his background demonstrates his ability to successfully manage his business, contribute to the country's competitiveness, foster its development, and generate income for the United States.

The expert opinion letter's author emphasizes the significance of the IT field and highlights the Petitioner's entrepreneurship, business, IT education and training, and digital marketing experience. The author claims that the Petitioner's proposed endeavor is of substantial merit and national importance because entrepreneurship and small businesses are vital to the economy, and the Petitioner's endeavor aligns with government initiatives. The Petitioner also submits recommendation letters from individuals who attest to his experience training senior developers to work for large companies, training through YouTube videos, and his abilities to provide online courses. In addition, the record includes a business plan and resume that highlight the Petitioner's education, qualifications, and experience in the IT field as well as his plans to expand his business, along with industry reports and articles that emphasize the importance of the IT industry.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Petitioner's work. While the Petitioner claims his endeavor is nationally important, the Petitioner has not offered sufficient information and evidence to 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. *Id.* at 893. Here, the record does not include adequate corroborating evidence, to show that the Petitioner's specific proposed work as an entrepreneur in the IT education field offers broader implications in his field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance.

Though we acknowledge the Petitioner's assertions and the evidence he submits on appeal, we conclude that the Petitioner has not shown his proposed endeavor stands to sufficiently extend beyond his customers to enhance societal welfare on a broader scale indicative of national importance.

The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that his specific endeavor has national importance under *Dhanasar's* first prong. The

Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. Specifically, the Petitioner has not demonstrated that his specific endeavor stands to provide substantial economic benefits in the United States. While the Petitioner claims that his YouTube videos attract a substantial viewership and that by year five his company will offer 90 direct and 108 indirect jobs and garner total revenue of \$58,100,000, the record does not support the Petitioner's general assertions with corroborating evidence demonstrating the plausibility of those assertions. Furthermore, the lack of detail in the Petitioner's projections makes it difficult to determine how the Petitioner's proposed endeavor differs from that of other entrepreneurs in the IT education field in the United States.

On appeal, the Petitioner relies on his education and professional experience and various industry reports to establish why his teaching and business owner endeavor in the IT field is of national importance. He argues that his proposed endeavor is of national importance because his endeavor will generate "substantial ripple effects" on key commercial and business activities and will serve the business development and functions of U.S. companies. Although an individual's experience, qualifications, contributions, and achievements are material, they are misplaced in the context of the first *Dhanasar* prong. The Petitioner's claimed extensive experiences are material to *Dhanasar*'s second prong—whether an individual is well positioned to advance a proposed endeavor—but they are immaterial to the first *Dhanasar* prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91.

Moreover, the record does not establish how the proposed endeavor will have broader implications beyond benefitting the Petitioner's customers. As previously mentioned, 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 sufficiently explained how he will positively impact the U.S. economy and create direct and indirect jobs to move the U.S. economy on a broad scale rising to the level of national importance. Without evidence projecting U.S. economic impact or job creation attributable to the Petitioner's proposed endeavor, it is insufficient to assert that the benefits to the U.S. regional or national economy resulting from the proposed endeavor would rise to the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner reiterates that his proposed endeavor is of national importance because it is a matter of national initiatives. The Petitioner must nonetheless demonstrate his specific proposed endeavor of working as an entrepreneur in the IT field rather than the importance of the national initiatives and interests, industries, or fields. He has not done so.

It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For the aforementioned reasons, the Petitioner's proposed work 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. 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 *Dhanasar* analytical framework's requisite first prong, we conclude that he has not established 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.

**ORDER:** The appeal is dismissed.