



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

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

In Re: 29463978

Date: JAN. 9, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 as 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 the merit of 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 discretion¹, 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.

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).

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 indicated:

[The Petitioner], who has an incredible wealth of knowledge and decades of experience in both European and American electrical systems design, standards and technology, will provide highly specialized consulting services to U.S. electrical companies utilizing European technology as well as German, Austrian and Swiss electrical companies operating in the U.S. Specifically, [the Petitioner], will engage in activities such as, but not limited to, construction, project management, management, maintenance management and sales management consulting within the electrical industry, servicing the aforementioned companies.

In addition, the Petitioner provided a business plan for H-C-T- reflecting the company's mission "[t]o share [the Petitioner's] global knowledge and experience from more than 40 years of construction and management in the field of electrical engineering in the most varied industrial branches international and national companies."

In response to the Director's request for evidence (RFE), the Petitioner submitted a "Proposed Endeavor Statement" indicating:

My proposed endeavor is to build on my extensive experience and knowledge in the fields of European Electrical Engineering, and more than 30 years of professional experience in the fields of – development, design, planning, software, commissioning of PLC in automation, project and product management, quality management, installation mechanical and electrical, to improve the field and contribute to the furtherance of the nation by and through my related projects, such as construction, project management, maintenance management and sales management consulting, providing highly specialized consulting services to US electrical companies using European technology, as well as German, Austrian and Swiss electrical companies operating in the United States, in order to pass on the knowledge and experience I have to the employees of the company I work for and, or course, to Improve the quality of the installation service to be provided

The Petitioner also offered an "Updated Personal Statement" reflecting:

. . . I have extensive experience in both European and U.S. electrical system design, standards and technology, and plan to provide highly specialized consulting services to U.S. electrical companies using European technology, as well as German, Austrian and Swiss electrical companies operating in the United States.

My endeavor is to perform activities such as, but not limited to, construction, project management, maintenance management and sales management consulting within the electrical industry, serving the aforementioned companies.

This will be possible through the creation of the consulting company [H-C-T-], in furtherance of my proposed endeavor to implement my developments and protocols train in the USA the European standard at USA companies to here [sic] the employees, in the areas of mechanics and electrical installations in the industries, documentation, guidelines, protocols, among others.

Regarding substantial merit, the endeavor's merits may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner provided documentation on a wide range of topics, such as electrical standards, foreign direct investment, trade investment, job creation from German investment, the importance of apprenticeship, and skill shortages. Here, the Petitioner has shown the substantial merit of his proposed endeavor.

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 the Petitioner argues the national importance of the wide range of topics indicated above, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of his particular electrical engineering consulting services through his business rather than the importance of electrical standards, investments, apprenticeships, or the industry or field. 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 Petitioner also contends that his “endeavor in the instant case holds greater national importance since [it] will directly tackle the STEM [science, technology, engineering, or mathematics] shortage, especially electrical engineers, and the shortage of skilled labor in the electrical industry.” However, the alleged shortage of occupations or occupational skills does not render his proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. Furthermore, with respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance.² Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance.³ On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance.⁴

² *See generally* 5 USCIS Policy Manual D.2, <https://www.uscis.gov/policymanual>.

³ *Id.*

⁴ *Id.*

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 did not offer specific information and evidence to corroborate his assertions that the prospective impact of working as an electrical engineering consultant 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 his field more broadly. *Id.* at 893. Here, the record does not show through supporting documentation how his specific consulting services stand to sufficiently extend beyond his prospective clients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

In addition, the Petitioner repeatedly emphasized his experience, skills, and knowledge. The Petitioner's experience 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, although the Petitioner provided a business plan, the Petitioner did not demonstrate how his business' claimed revenue 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. While the revenue forecasts \$37K in year 1 to \$126K in year 3, the business plan does not establish the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, although the plan claims the business would create only one position (for the Petitioner) and possibly two more positions at a later date, the Petitioner did not show that such future staffing levels would provide substantial economic benefits to Florida or the region or U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not demonstrate that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not establish that, beyond the limited benefits provided to its prospective clients, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

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.⁵

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

⁵ 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).

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.