



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

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

In Re: 30323720

Date: MAR. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a legal analyst and entrepreneur, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for a national interest waiver. 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” *Id.* 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 matter of discretion,<sup>1</sup> 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.

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

## II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record supports that determination. 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 Petitioner intends to develop a business through which he will provide consultancy services to clients from the United States and Brazil seeking to invest in seasonal and long-term rental properties in Florida. The Petitioner states that he will guide individual and corporate investors through the stages of real estate acquisition and advise clients on forming corporate entities in order to optimize their investment earnings.

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. *Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner's endeavor to provide consultancy services and contribute to the U.S. economy has substantial merit. The Director concluded, however, that the Petitioner did not sufficiently demonstrate that his proposed endeavor has national importance. The Director examined the business plan and summarized its scope, its personnel projections, and its financial forecasts, ultimately determining that its anticipated economic impact would not reach the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890. The Director added that, in order 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. *Id.* at 889. In addition to the endeavor's limited prospective economic effects, the Director determined that the Petitioner had not demonstrated that his business would employ a significant population of workers in the locality where he intends to operate. The Director also determined that the Petitioner's proposed endeavor would not substantially benefit the regional area through increased employment, business activity, trade, or tax revenue.

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<sup>1</sup> *See 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).

Further, the Director cited the Petitioner's claim that his business would operate in an economically depressed area, stating that, although *Dhanasar* highlights the importance of endeavors in an economically depressed area, the focus of national importance is on whether the endeavor has "significant potential to employ U.S. workers or has other substantial positive economic effects." *Id.* at 890. The Director stated that, in terms of national importance, the issue of whether the area in which the Petitioner intends to operate his business is economically depressed is secondary to whether he has demonstrated that his endeavor has significant potential to employ U.S. workers or result in other substantial positive economic effects, which the Director determined it did not.

On appeal, the Petitioner states that his brief will clarify the reasons that his petition should be approved and asks that the decision to deny his petition be reconsidered. The Petitioner does not identify any erroneous determinations or reasoning in the Director's decision. An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v). The Petitioner has not described the basis of his appeal beyond inferring that the evidence of record was either misunderstood or insufficiently explained.

While the Petitioner's statements reflect his intention to provide consultancy services for his business clients, he has not provided sufficient evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. The Petitioner's statements and business plan outline generalized descriptions of the consultancy services that the Petitioner intends to provide and discuss, in broad terms, the potential of his business to create direct and indirect jobs. These statements and the business plan, however, are not supported by probative evidence to demonstrate his claims. The Petitioner also points to articles and reports in the record that discuss the impact of the real estate industry on the economy, the effects of housing shortages on small families, and issues related immigration from Brazil. These documents, however, do not include insight into how the endeavor proposed by the Petitioner is one that rises to a 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, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact the field of real estate investment consultancy or the U.S. economy more broadly at a level commensurate with national importance.

The record does not establish that the Petitioner's proposed endeavor is one of national importance as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *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 alternative issues on appeal where an applicant is otherwise ineligible).

### III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

**ORDER:** The appeal is dismissed.