



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

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

In Re: 29828695

Date: MAR. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business manager, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) 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. *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding the record did not establish that 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

Whilst 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 USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate 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 petition 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

As stated above, once the Petitioner has established their categorical eligibility for the EB-2 immigrant category based on having earned an advanced degree or establishing that they are a noncitizen of exceptional ability, the Director will evaluate the national interest in waiving the requirement of a job offer and thus a labor certification under the three prongs of the analytical framework we first discussed in *Dhanasar*. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole 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.

The Director's request for evidence (RFE) only requested the Petitioner provide evidence of their eligibility under the second prong of the *Dhanasar* analytical framework to evaluate how well positioned the Petitioner was to advance their proposed endeavor. The RFE did not request evidence or otherwise meaningfully address and analyze whether the Petitioner's proposed endeavor is of substantial merit and national importance or whether a waiver of the labor certification requirement

and thus of a job offer benefitted the United States interest on balance of applicable factors. And the Director ultimately concluded the Petitioner's proposed endeavor, whilst substantially meritorious, lacked the national importance required under the first prong of the *Dhanasar* analytical framework, that the Petitioner was not well-positioned to advance their proposed endeavor, and that on balance of applicable factors a waiver did not benefit the United States interest. This resulted in a functional deprivation of opportunity for the Petitioner to address the Director's concerns regarding the national importance of their endeavor and whether on balance of applicable factors a waiver would benefit the United States interest.

Our exercise of discretion to waive the requirement of a job offer, and therefore a labor certification, requires adherence to all three of the *Dhanasar* framework's prongs. So we conclude that a remand is warranted in this case because the Director's decision is insufficient for review.

A. Substantial Merit and National Importance of the Proposed Endeavor

The substantial merit of an endeavor can be shown in any number of areas such as business, entrepreneurialism, science, technology, culture, health, education, arts, or the social sciences. The furtherance of human knowledge, potential economic impact on, and economic benefits for the United States can also be evaluated to determine the substantial merit of a proposed endeavor. The Director concluded the Petitioner's proposed endeavor was substantially meritorious and we see no error in their conclusion.

But, whilst we share the Petitioner's concerns¹ with the manner of the development of the proceedings below, we are not convinced that the record as it is currently constituted supports the Petitioner's eligibility for a discretionary waiver of the labor certification requirement and thus a job offer. In support of their petition, the Petitioner submitted the following:²

- Diplomas, certificates, and courses completed by the Petitioner;
- Evaluation of Academic Qualifications & Experience by Dr. [redacted] professor, department of data analytics and information science, [redacted] under the auspices of Morningside Evaluations;
- Letter of [redacted] now owned by [redacted] describing a "business partnership" of more than 10 years as an employee of [redacted] and subsequently a "partnership" or provision of contractual services in a manner other than that of an employee from April 2001 to October 2009;
- Unsigned declaration from [redacted] describing the Petitioner as a representative of [redacted] from June 1, 2010 to April 15, 2013 accompanied by document purporting to be a "Clicksign" electronic legal document validation;

¹ We do not, however, agree with the Petitioner's contention that the list of documents the Director mentioned in their decision "was not the documentation submitted." The Petitioner appears to mistakenly consider the Director's list to refer to documentation submitted in response to the RFE. The Director's list consists of evidence and documentation the Petitioner submitted initially with their petition. So we do not agree that the Director committed a "serious error in the analysis of forwarded documents."

² Whilst we may not discuss every piece of evidence submitted, we have reviewed and considered each one.

- Copy of contract to provide commercial manager services executed between [] and [] on June 1, 2010;
- Recommendation letter from []
- Letter from [] accountant for [] attesting that the Petitioner was a business manager from September 2002 to August 2018;
- Statement from accounting manager [] attesting to the ongoing operational nature of []
- Proof of legal registration of [] by the National Registry of Entities in Brazil;
- Certificate of debt and a certificate of discharge of federal taxes issued by Brazilian Finance Ministry;
- The Petitioner's resume;
- Print out of U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for General and Operations Managers dated May 2021;
- Letter of [] human resources manager, [] listing the Petitioner's salary while working with [] between May 2013 and November 2013 as a business manager;
- Letter of [] people analyst, [] (now owned by []) listing the Petitioner's salary while working with [] between June 3, 1996 and October 13, 1999 as a business manager;
- Copies of the Petitioner's paystubs;
- Certificate of cancellation of business registration for [] dated May 19, 2022.
- Letter of [] information systems technology coordinator of the [] of Brazil describing the Petitioner's work as a business manager;
- Letter of [] information technology manager, [] of Brazil, describing the Petitioner's work as a business manager;
- Copy of legal announcement in Official Diary of the Union by [] of appointment of [] as coordinator of information technology of the []
- Copy of legal announcement in Official Diary of the Union by National Press regarding the acquisition of license of use of product ORACLE, version of Operational System Windows 2000;
- Copy of legal announcement in Official Diary of the Union by [] of appointment of [] as coordinator of information technology of the []
- Copy of legal announcement in Official Diary of the Union by executive secretary of the general secretary of the presidency of the republic's designation of [] to act as an eventual substitute in the commissioned function of the executive power in coordination of []
- The Petitioner's Professional Plan;
- Letter of [] senior business development, [] soliciting the Petitioner for a "business partnership";
- Letter of [] chief executive officer, [] soliciting the Petitioner for a "business partnership";

- Letter of [] hiring team director, [] soliciting the Petitioner for the fourth step of their hiring process in connection with [] bilingual customer success manager position;
- Copies of email correspondence between the Petitioner and recruiters for contract sales positions at their respective organizations;
- Copy of contract with 12-month duration between the Petitioner and [] Company for the Petitioner's services as a non-employee agent of the [] Company;
- Letter of [] planning and budget analyst – information technology specialist, [] describing the Petitioner's work as a business manager;³

In response to the Director's RFE, the Petitioner submitted additional course certification certificates, evidence concerning the life insurance and annuities segment of the "American market," evidence of their licensure as an insurance agent in the State of Florida, contractor agreements with [] [] for employment services, and documentation supporting their gifted child's educational achievement and educational path.⁴

The Petitioner proposed to apply their experience in product and project development, strategic planning, and commercial management. The Petitioner expressed that it was their intention to "contribute to the U.S. economy as a Business Manager." The Petitioner aimed to "contribute to foster small, medium and large companies growth" and "continue [their] activities as a Business Manager utilizing all of [their past] knowledge..." such as "innovative strategic solutions" utilizing information technology for business management in "sales and commercial areas with a focus on business expansion, providing skillful market intelligence, development and implementation of strategic planning, identifying technologies and market partnerships that can add value to each company, effectively research the organization and understand its needs, understanding the segment, and customer preferences to determine the focus of sales and budget efforts, building, analyzing and maintaining accurate forecasts of sales opportunities and statistics." The Director, as they develop the record, may elect to further investigate whether the Petitioner's proposed endeavor is essentially a job search. Because the purpose of a national interest waiver is not to facilitate a petitioner's U.S. job search.

Moreover, in *Dhanasar* we focused the first prong of our analysis on the potential impact of a Petitioner's specific proposed endeavor to consider its substantial merit and national importance. In determining national importance under *Dhanasar*, the relevant question is not the importance of the field, 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. In

³ The Petitioner asserts on appeal that the Director misidentified evidence submitted initially with the petition as evidence submitted in response to the RFE. Contrary to the Petitioner's assertions, the Director's decision does not identify how the evidence they specifically mention in the decision was submitted into the record.

⁴ The Petitioner's appeal makes special mention of their gifted child as well as the child's universe of opportunities in the United States and encourages us to consider these favorably. And whilst we recognize the Petitioner's gifted child and their accomplishments thus far, our consideration of whether to exercise discretion to waive the job offer requirement, and thus the requirement of a labor certification, in the national interest is governed solely by the three prong *Dhanasar* analytical framework. The *Dhanasar* analysis does not make provision for the evaluation of the individual merits of dependent family members.

Dhanasar, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have a 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. So what is critical in determining the national importance under *Dhanasar* is whether the proposed endeavor has a potential prospective impact with broader implications which rise to the level of national importance. It is not what duties or what occupation the noncitizen will fill or perform but their actual plan with their occupation and duties that is examined.

The record reflects the Petitioner’s proposed endeavor is to continue their career as a business manager focusing on sales utilizing information technology in their duties. In response to the RFE, the Petitioner emphasized that they would be focusing on the insurance field for their duties. The Director may also elect to consider that the Petitioner roots their eligibility under this first prong of the *Dhanasar* framework citing their previous professional experiences and contents of their “Professional Plan.” Essentially, the Petitioner contends that it is their personal execution of their proposed endeavor which elevates it to a level of national importance. But this assertion expresses a fundamental misunderstanding of the first prong of the *Dhanasar* framework. The first prong of the *Dhanasar* framework focuses on the proposed endeavor; not on the Petitioner’s execution of that proposed endeavor. As they perform their analysis, the Director may choose to consider the Petitioner’s ineligibility under the first prong of the *Dhanasar* analytical framework when their assertions focus on their execution of the proposed endeavor and not on the national importance of their proposed endeavor separate and apart from themselves.

The Petitioner also submitted several letters of recommendation from employers and “business partners” describing the work they Petitioner accomplished to support the potential prospective impact of their work in the proposed endeavor. They also submitted numerous certificates from a variety of places, such as [REDACTED] purporting to support their skills in sub-disciplines of entrepreneurship, English, and information technology. The Petitioner contends that national importance is broadly implicated by the potential value that the U.S. economy will realize when they avail themselves of the Petitioner’s work. In considering the national importance of the Petitioner’s proposed endeavor, the Director may choose to evaluate the letters of recommendation submitted by the Petitioner to evaluate if their contents support the broader implication of the endeavor rising to a level of national importance. For example, it appears that the letters generally speak to the Petitioner’s prior employment or independent contractual duties to the benefit of the individual employers or contractual partners. On appeal, the Petitioner highlighted letters from “private and public organizations in Brazil” that spoke to the Petitioner’s “networking and experience in marketing and executing Information Technology (IT) solutions” such as the [REDACTED] of Brazil, [REDACTED] and other Brazilian Public Administration Agencies. But it is not clear how the Petitioner’s past activities support the national importance of their proposed endeavor because, as stated before, when considering the first prong of the *Dhanasar* analytical framework, we are concerned with the proposed endeavor in isolation from the individual petitioner. The Director could weigh and draw a conclusion as to whether the Petitioner’s demonstration of prior similar work has an influence on the proposed endeavor’s potential prospective impact based on its national importance bearing in mind that the Petitioner’s contentions about their successful past performance in the endeavor they propose, as well

as evidence and information of their achievements and recognition would better serve a demonstration of eligibility under the second prong of the *Dhanasar* framework.

Generally certificates or licenses earned by a Petitioner relate to them as an individual and their own personal development of their core skills. The national importance of the Petitioner's proposed endeavor stands separate and apart from the Petitioner's skills. The Director may ponder whether the certificates in various discrete business-related subjects like entrepreneurship, English, and information technology, from distance or online learning non-credit seminars from [redacted] or similar as well as their Florida insurance agent licensure illuminate the national importance of the Petitioner's endeavor or are more indicative of the Petitioner's education, skills, and knowledge which are a relevant point for evaluation under *Dhanasar's* second prong.

B. Well Positioned to Advance the Proposed Endeavor

Our analysis now turns to the Petitioner's eligibility under the second prong. As stated above, the second prong shifts the focus from a petitioner's proposed endeavor to the petitioner or individual themselves and how well positioned they are to advance their proposed endeavor. We are skeptical the record as it is currently constituted reflects that the Petitioner is well positioned to advance their proposed endeavor.

Whilst performing an analysis under the second prong of *Dhanasar*, the Director may elect to gauge the following factors and any other relevant factors in evaluating whether the Petitioner is well positioned to advance their proposed endeavor:

- A petitioner's education, skill, knowledge, and record of success in related or similar efforts;
- A petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing;
- Any progress towards achieving the proposed endeavor; and
- The interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

On remand, the Director should conduct an individualized consideration of the multifactorial analysis under *Dhanasar's* second prong to determine how well positioned the Petitioner is to advance their proposed endeavor. The Director could form an impression of the Petitioner's education, for example to determine if the Petitioner is well-positioned to advance their proposed endeavor bearing in mind that educational degrees, certificates, and skills in and of themselves are not a basis to determine that a person is well positioned to advance a proposed endeavor. *Id.*

The Director may contemplate if the testimony of the writers of the letters of recommendation in combination with other objective evidence in the record demonstrates that the Petitioner is well positioned to advance their proposed endeavor. It is unclear from the record whether the Petitioner's proposed endeavor essentially selling insurance to the public and financial solutions to individuals in the education sector is a related or similar effort to their past work and whether the contents of the letters demonstrate a record of success. As stated above, the letters the Petitioner submitted only highlight past experiences and accomplishments, generally in information technology sales business management. The Director may conclude upon this consideration of the testimony from the writers

of letters of recommendation in the record that they do not show the Petitioner's progress towards achieving their proposed endeavor such that they have developed a record of success and are well-positioned to advance it.

The Petitioner submitted several letters, contracts, and correspondence emails purporting to demonstrate interest or support for their endeavor. But these documents appear to demonstrate that the Petitioner has entered or could enter into arrangements to provide a set of general or vague services as an agent. The Director may elect to develop the record to examine if the activities described in the contracts are representative of or support the progress of the Petitioner's proposed endeavor. For example, the Petitioner cites in their appeal correspondence with individuals named Ms. [] and Mr. [] inviting them to join their "national sales team." But it is not clear from the record how employment, "partnership," or contracting with Ms. [] and Mr. [] organization is indicative of interest or support for their endeavor. It is in fact unclear how any of the business opportunities the Petitioner presented for our evaluation, such as their service as an insurance agent with [] or independent advisor with [] demonstrated how well they are positioned to advance their proposed endeavor because the record does not support their relation or context to the endeavor the Petitioner intends to undertake. The Director may choose to examine whether these activities reflect interest or support in the Petitioner's proposed endeavor or are simply randomized unconnected job solicitations without regard to the services the Petitioner intends to provide by and through their proposed endeavor.

So we remand this matter with instructions to enter a new opinion consistent with the *Dhanasar* analytical framework described here.

C. Balancing Factors to Determine Waiver's Benefit to the United States

If the Director finds that the Petitioner meets the eligibility requirements contained in the first and second prongs of the *Dhanasar* framework they should move to evaluating whether, on balance, the Petitioner demonstrates that it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The Director can consider the impracticality of a labor certification, the benefit to the U.S. of a petitioner's contributions, the urgency of a petitioner's contributions to the national interest, the capacity for job creation, and any adverse effects on U.S. workers when conducting the balancing of the national interests of waiving the requirements of a job offer and therefore a labor certification.

III. CONCLUSION

For the foregoing reasons, the matter will be remanded to the Director to determine whether the Petitioner has established: (1) the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision; (2) that the Petitioner is well positioned to advance the proposed endeavor under the second prong and; (3) on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification for the Petitioner. The Director may request any additional evidence considered pertinent to rendering a decision under the foregoing analysis, and we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.