



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

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

In Re: 30212440

Date: MAR. 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a supply chain specialist, seeks classification as a member of the professions holding an advanced degree or 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 the Petitioner did not demonstrate his eligibility 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.” Section 203(b)(2)(B)(i) of the Act. 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,¹ 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.

II. ANALYSIS

A. EB-2 Classification

In order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act, either as an advanced degree professional or an individual of exceptional ability. In denying the petition, the Director did not determine whether the Petitioner qualified for the EB-2 classification as an advanced degree professional or as an individual of exceptional ability. However, the Director did conclude, without analysis, that the Petitioner's foreign bachelor's degree qualified him as an advanced degree professional in the request for evidence (RFE) notice.

As discussed below, the Petitioner has not presented adequate reasons or evidence on appeal to overcome the Director's determination that he is ineligible for a national interest waiver, as a matter of discretion. Therefore, we need not remand the matter to the Director to clarify the basis for the determination in the RFE that the Petitioner is eligible for the EB-2 classification as an advanced degree professional. *Id.* Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of his EB-2 eligibility. *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).

B. National Interest Waiver

The Petitioner, a native and citizen of Brazil, stated in the Form I-140, Immigrant Petition for an Alien Worker, that his job title was "supply chain specialist." The Petitioner submitted several articles and reports related to supply chain professionals, for instance, discussing shortages of supply chain professionals and the impact of COVID-19 on the supply chain industry. The Petitioner also provided letters from colleagues discussing his skills and experience. For example, one letter from an operations director at a logistics company in Brazil indicated that the Petitioner was "highly recommended" and that he had "no doubt that [the Petitioner] will also be very successful in the United States of America." The Petitioner did not specifically describe his proposed endeavor in the United States or why it would be of national importance.

¹ *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 later issued a request for evidence (RFE) stating the Petitioner had demonstrated that his work as a supply chain specialist in the United States had substantial merit and that it “met the first prong of the *Dhanasar* framework” related to national importance. As such, in response, the Petitioner did not submit additional assertions or documentation to demonstrate the national importance of his proposed endeavor. The Petitioner did submit three reference letters from colleagues, an email from a U.S. company based in Florida regarding a potential supply chain planning position, and information on supply chain projects he worked on abroad.

The Director later denied the petition, concluding the Petitioner did not establish the national importance of his proposed endeavor. The Director emphasized that the Petitioner did not demonstrate how his proposed endeavor would have significant potential to employ U.S. workers and emphasized the lack of evidence to support that his proposed work would generate interest from customers or investors and contribute to the national economy. The Director determined the Petitioner did not establish that his proposed work in the United States would have an impact on the field more broadly or have a substantial economic impact. The Director further stated that the Petitioner did not sufficiently describe his proposed endeavor and its potential prospective national impact.

On appeal, the Petitioner states that the Director recognized the national importance of his proposed endeavor in the RFE and did not request additional evidence as to the first prong of the *Dhanasar* framework. The Petitioner asserts “there is no requirement for more evidence related to the national importance [as he] did not submit more evidence related to the national importance as a response to the RFE. Thus, the Petitioner is submitting the same arguments [on appeal] as presented in the initial package for your reference and convenience. . .” Notably, the regulation at 8 C.F.R. § 103.2(b)(8) permits the Director to deny a petition for failure to establish eligibility without having to request evidence regarding the grounds for ineligibility identified by the Director in the denial. Even though the Director offered conflicting national interest determinations between the RFE and denial notices, it is not clear what remedy would be appropriate beyond this appeal process. The Petitioner has been afforded the opportunity to supplement the record on appeal as to the issue of national importance, therefore it would serve no useful purpose to remand this matter to simply afford the Petitioner another opportunity to supplement the record with new evidence. As such, we will analyze, de novo, whether the Petitioner has demonstrated the national importance 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 “the specific endeavor that the foreign national proposes to undertake.” *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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. 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 emphasizes on appeal his expertise and experience abroad as a supply chain professional. The Petitioner points to his “in-depth technical knowledge and distinguished skills” in business logistics, supply chain management, project management, strategic leadership, transport

logistics, industrial logistics, reverse logistics, strategic planning, systems, projects, logistics systems, optimization techniques, and team development.” The Petitioner states that supply chain processes are important to profitability and that there is a labor shortage of supply chain professionals in the United States. The Petitioner indicates that his experience and expertise working as a supply chain analyst and logistics manager abroad is relevant to addressing this labor shortage. The Petitioner asserts that he can help U.S. companies find ways to make their supply chain operations work better, emphasizing that he worked abroad on improving these processes and reducing logistics costs. The Petitioner contends that he gained “indispensable expertise by working for a multi-national renowned corporation – [REDACTED] – for several years.” The Petitioner states that he will “execute complex processes” and “provide indispensable contributions to the U.S.” In sum, the Petitioner asserts that the record includes sufficient corroborating evidence to establish that his work rises to the level of national importance. However, the Petitioner’s knowledge, skills, and experience 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 that he proposes to undertake has national importance under *Dhanasar*’s first prong.

The Petitioner also discusses a shortage of supply chain professionals in the United States and the impact these professionals could have on the profitability of U.S. companies. However, even if the Petitioner had established an asserted shortage of supply chain professionals, a shortage of workers in a petitioner’s field does not demonstrate the prospective national impact of a proposed endeavor. For instance, the Petitioner does not sufficiently describe how filling one supply chain position in the United States would have a prospective national impact on this claimed shortage of workers. Again, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work, but the specific endeavor that the foreign national proposes to undertake.

As noted by the Director, the Petitioner did not, and still does not on appeal, sufficiently articulate a specific proposed endeavor in the United States, beyond a vague intention to work generally in the supply chain industry. For instance, the Petitioner submitted an email from June 2023² indicating that he had applied for a supply chain planning position in Florida with [REDACTED]. The email indicated that the employer wished to conduct a follow up interview, but he otherwise submitted little indication as to what his specific proposed endeavor would be in the United States. The Petitioner does not sufficiently discuss and document what his proposed endeavor would involve, nor its national impact, other than suggesting that he may be employed by [REDACTED] in the United States.

For instance, the Petitioner contends that he will “execute complex processes” and “provide indispensable contributions to the U.S.,” but he does not discuss these asserted processes or contributions in detail. The Petitioner lists his expertise in several topics including business logistics, supply chain management, project management, strategic leadership, transport logistics, industrial logistics, among others, but does not articulate how he would impact these varying fields on a national level. The Petitioner asserts that he can help U.S. companies find ways to make their supply chain operations work better, noting that he worked abroad on improving these processes and reducing logistics costs. However, the Petitioner does not describe how he would make U.S. companies improve their supply chain operations on a national level. There was little indication from the

² The petition was filed on August 1, 2021.

submitted evidence that the Petitioner would be doing national-level work related to the supply chain operations of various companies. The Petitioner must resolve discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In sum, the Petitioner has provided little supporting evidence to substantiate that his proposed work as supply chain specialist in the United States would have a potential prospective impact on a national level.

The Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor would rise 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. *Matter of Dhanasar*, 26 I&N Dec. at 893. As noted by the Director, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his potential employer and its clientele. As such, the Petitioner has not demonstrated that his proposed endeavor would have a broad influence commensurate with national importance.

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, we decline to reach and hereby reserve the Petitioner's arguments with respect to the second and third prong outlined in *Dhanasar*. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); see also *Matter of L-A-C-*, 26 I&N Dec. at 516.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.