



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

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

In Re: 30336393

Date: MAR. 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an insurance specialist, 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,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.

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 risk-management consultancy services to small businesses and sell insurance policies to individual clients. He plans to operate his company in Texas within the region comprising

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 and insurance sales 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 Petitioner's proposed endeavor and determined 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.

Further, the Director addressed the Petitioner's claim of shortages in his area of expertise, stating that shortages in a field do not demonstrate that the Petitioner's endeavor stands to have an impact on the broader field or otherwise have implications rising to the level of national importance. The Director

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).

explained that the Petitioner's skills and experience that he intends to apply to his endeavor do not demonstrate the national importance of that endeavor; the Director referenced *Dhanasar*, wherein USCIS 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. The Director also addressed articles and reports submitted to demonstrate the importance of the field, stating that USCIS cannot conflate the importance of a field with the national importance of a petitioner's 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." *See 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.

On appeal, the Petitioner explains how he will operate his company and the importance of insurance in the economy. 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 reiterating his assertion that his proposed endeavor has national importance.

While the Petitioner's statements reflect his intention to provide insurance sales and consultancy services for individual clients and small businesses, 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 services that the Petitioner intends to provide and discuss, in broad terms, the potential of his business to impact the economy through the creation of direct and indirect jobs. The Petitioner also states that he will "[o]perate in regions and markets where large companies are not interested, to promote economically depressed areas and appreciation of the local market." These statements and the business plan, however, are not supported by probative evidence to demonstrate his claims. The Petitioner further states that he will hire six employees; the record, however, does not contain evidence sufficient to demonstrate the potential positive impact of the Petitioner's small business on the region in which he intends to operate his company.

The Petitioner also emphasizes the importance of knowledge transfer, stating that he will share his business knowledge with future employees. 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 insurance industry, the field of insurance sales, 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.