



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

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

In Re: 30336766

Date: MAY 6, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks 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 Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established 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 pursuant to 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 a member of the professions holding an advanced degree 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.

While 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, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that 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. *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 is discretionary in nature).

The first prong, substantial merit and national importance, focuses on the specific endeavor that 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner asserted that he would work as the chief executive officer of a startup transportation company based near [REDACTED] Florida, that will provide "parcel and pallet shipments through [REDACTED] [REDACTED]. The Petitioner stated that his transportation company would "optimize clients' supply chain management strategies and reduce their shipping costs" and "offer clients comprehensive logistics strategies for all forms of transportation." The Petitioner indicated his company would hire 16 workers within the first five years of operations. The Petitioner also addressed his qualifications, and he referenced publications that provide generalized information regarding business and related topics.

The Director acknowledged that the proposed endeavor has substantial merit. However, the Director concluded that the record does not establish the proposed endeavor "has national or even global implications; has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area" or otherwise establish the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. The Director further concluded that the Petitioner is well positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong; however, the Director determined that the record does not satisfy the third *Dhanasar* prong. *See id.* at 888-91.

On appeal, the Petitioner reiterates information in the record regarding his prior work experience and qualifications. The Petitioner also references "industry reports and articles" in the record that provide generalized information regarding business and related topics. The Petitioner reasserts that his proposed endeavor will have national importance.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *See id.* at 889. *Dhanasar* provided examples

of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” or those with “significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

We first note that neither the Petitioner’s prior work experience nor “industry reports and articles” that provide generalized information regarding business and related topics are material to whether the proposed endeavor may have national importance. An individual’s prior work experience relates to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—but it does not inform how the potential prospective impact of the specific endeavor an individual proposes to undertake may have the type of broader implications indicative of national importance, as contemplated by the first *Dhanasar* prong. *See id.* at 888-91. In turn, the “industry reports and articles” in the record, including those the Petitioner references on appeal, do not address the Petitioner, the specific endeavor he proposes to undertake, and how the endeavor may have the type of broader implications indicative of national importance. *See id.* at 889-90. Because the Petitioner’s prior work experience and the generalized “industry reports and articles” do not address how the specific endeavor the Petitioner proposes to undertake may have national importance, they do not establish the proposed endeavor has national importance, and we need not address them further.

The record establishes that the proposed endeavor will benefit the Petitioner, as the chief executive officer of his own company, and the clients or customers who will use the company’s services. We note in particular that the Petitioner’s own description of his company emphasizes the benefits it will provide to the company’s clients. However, the record does not establish how the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have the type of broader implications contemplated by the first *Dhanasar* prong. *See id.* For example, the record does not establish how the Petitioner’s startup logistics and transportation company based in Florida—among other logistics and transportation companies operating in Florida and throughout the United States—may have national or even global implications within the field of logistics, transportation, or any other particular field, “such as those resulting from certain improved manufacturing processes or medical advances.” We acknowledge that the Petitioner intends to employ 16 workers within the first five years of his company’s operations; however, the record does not establish how employing 16 workers based near [redacted] Florida, demonstrates “significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area.” *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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

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

ORDER: The appeal is dismissed.