



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

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

In Re: 31208282

Date: MAY 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding the Petitioner had not established eligibility for 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 dismiss the appeal.

To establish eligibility for a national interest waiver, petitioners must 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if:

- The proposed endeavor has both substantial merit and national importance,
- The individual is well-positioned to advance the proposed endeavor, and
- On balance, waiving the job offer requirement would benefit the United States.

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner stated:

¹ See also *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

[He] intends to continue using his expertise and knowledge to work as an Entrepreneur and contribute to the U.S. economy through business development activities. He will do this by further developing and expanding his already registered company in the nation, [REDACTED]— which is incorporated in the state of Florida. The business is a cell-phone accessory kiosk, which is designed to offer high-quality accessories in the retail industry; it is primarily located across U.S. malls and shopping center.

On appeal, the Petitioner maintains:

[He] intends to continue his career in the United States as an Entrepreneur and Business Professional, in which capacity he will enhance the revenue of U.S. companies, thus elevating their productivity patterns and market growth. This will improve the United States’ business sphere, and further position the nation as a business hub within the global economy. He will also create jobs and generate tax revenue through his U.S. based company. In both instances, [he] will provide significant sales growth potential and significant employment opportunities for the nation, which will ultimately impact the productivity of the U.S. business ecosystem, as well as national economic activities.

As it relates to substantial merit, the endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner provided “Industrial Reports and Articles” covering various topics, including entrepreneurialism, thereby satisfying the substantial merit 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 specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner emphasizes “the important role that business development professionals play in every type of business” and references the “Industrial Reports and Articles” involving broad topics, such as small businesses, top executives, risk management, and immigrant investment, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of owning and operating his particular cellphone accessory business.² In *Dhanasar*, we 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.

Moreover, the Petitioner repeatedly stresses his “progressive experience,” “theoretical and professional experience,” “expertise and extensive experience,” “international management experience,” “numerous roles,” “professional record,” “record of his business achievements and expertise,” “direct knowledge of the business operations and management,” and “knowledge and

² The Petitioner’s arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national importance part.

connections.” However, the Petitioner’s knowledge, skills, and abilities 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.

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. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how his cellphone accessory business largely influences the field and rises to the level of national importance. In *Dhanasar*, we determined 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. The record does not show through supporting documentation how his endeavor sufficiently extends beyond his prospective customers, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not demonstrate how his business plan’s claimed employment and tax projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although the business plan claims the creation of 159 positions after five years, the Petitioner did not demonstrate that such future staffing levels would provide substantial economic benefits to the [] Florida region or other anticipated regions or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not show that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. Similarly, while the business plan claims \$4.1M in cumulative tax generation after five years, the Petitioner did not establish that such figures would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. For all these reasons, the record does not establish that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner’s proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

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. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose, as well as a review of the Director’s favorable determination of the Petitioner’s eligibility as an individual of exceptional ability.³

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

³ 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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).