



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

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

In Re: 20635349

Date: JUN. 23, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

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

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts eligibility for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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. 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.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

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).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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 that the foreign national 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 foreign national. To determine whether he or she 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; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) 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.<sup>3</sup>

## II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director also determined that the Petitioner had established that the proposed endeavor met the substantial merit portion of the first prong set forth in the *Dhanasar* analytical framework. However, for the reasons discussed below, the Petitioner has not established the national importance of his proposed endeavor.

According to the Petitioner, he will continue to operate his "real estate development company that has established itself in the [redacted] market as an affordable housing investment company." As described, his company "is a subsidiary of [redacted] which produces 3D printed panels out of lightweight materials, allowing homes to be assembled in just a few days times and at a lower material cost than traditional stick-built homes." The company "will [] expand its operations to include the development of new housing using this modular building technique" and "aims to provide" buyers with "larger homes at lower cost."

As an initial matter, the record contains inconsistencies regarding the aforementioned 3D panels. In addition to the Petitioner's repeated statements that [redacted] "produces 3D printed panels," he also asserts that he "does not claim that [redacted] produces building panels," but instead will rely on "a contract" through "his connections to a company in [redacted] that produces modular housing panels using 3D printing tactics."<sup>4</sup> As the Petitioner's proposed endeavor is largely based upon the use of these panels in providing affordable housing, this is an important discrepancy. The Petitioner must resolve this inconsistency 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).

Although the Petitioner provides information and statistics regarding such matters as the housing market and real estate development industry,<sup>5</sup> in determining national importance, the relevant question is not the importance of the field, 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

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> We also note the Petitioner's description of [redacted] on pages 7 and 8 of the Business Plan, states that "the company's field of activity is development and investments in commercial real estate in [redacted]" but makes no mention of modular builds or 3D panels. We also note the Petitioner's description of [redacted] on pages 7 and 8 of the Business Plan, states that "the company's field of activity is development and investments in commercial real estate in [redacted]" but makes no mention of modular builds or 3D panels.

<sup>5</sup> While we may not discuss every piece of evidence submitted, we have reviewed and considered the record in its entirety.

“[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. While the Petitioner’s statements reflect his intention to provide affordable housing options for his future U.S. buyers, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance.

For example, although the Petitioner submitted job creation and financial projections, he provided little basis for such numbers.<sup>6</sup> The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Without sufficient information and evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from his affordable housing projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 890..

In addition, the Petitioner cites to his expertise and record of success in previous projects. His education and past experience, however, are considerations under *Dhanasar*’s second prong, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* The issue here is whether the Petitioner has demonstrated the national importance of his proposed work.

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 real estate development industry, the modular home and/or the affordable housing market, or the U.S. economy more broadly at a level commensurate with national importance. While providing modular and redeveloped properties at an affordable price is a noble business, beyond general assertions, he has not demonstrated that the particular work he proposes to undertake offers original innovations that contribute to advancements in his industry or otherwise has broader implications for his field. In addition, he has not sufficiently demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation.

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 of the Petitioner’s appeal, we decline to reach and hereby reserve the appellate arguments regarding the remaining issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of*

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<sup>6</sup> We note, for example, that according to the submitted information for Years 1 through 5, the Petitioner’s net profit was projected to be \$545,582 in Year 1 and \$5,735,129 in Year 2. Not only has the Petitioner not established the basis for these projections, but during the Petitioner’s first two years of business (from January 2018-January 2020), the business actually operated at a net profit loss of \$1,611. As the Petitioner did not sufficiently address this, we are left to question the reliability of his projections.

*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 he has not established that he is eligible for, or otherwise merits, a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.