



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

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

In Re: 19794471

Date: MAR. 9, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an 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 Texas Service Center denied the petition, concluding 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. On appeal, the Petitioner asserts that the Director did not properly weigh the evidence and erred in the decision.

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. 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). *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>1</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 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)

---

<sup>1</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

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>2</sup>

## II. ANALYSIS

The record indicates 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 a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner initially indicated that he intends to continue using his expertise and knowledge in information technology (IT), entrepreneurship, and business management to work as an entrepreneur in the United States, primarily in the IT industry. He stated that he intends to create businesses and jobs for American workers, offer expertise and advice to U.S. partner companies, and facilitate cross-border transactions, negotiations, and contracts between companies in the U.S., Brazil, and Latin America.

In a personal statement submitted in support of the petition, the Petitioner stated as follows:

As an entrepreneurial professional, I am no stranger to driven and strategic business decisions. I am an expert when it comes to business development and management, financial planning, sales, and marketing areas of a business. My understanding of the IT sector and my deep appreciation for strategic planning in business have allowed me to make advances within this important and profitable industry. I have applied strategic business planning and management to the IT business sector, which evinces no doubt that I will work in the United States in an area of substantial merit and national importance.

The Director issued a request for evidence (RFE) requesting the Petitioner to provide further information and evidence regarding his proposed endeavor in the United States. He was informed that he should submit a "detailed description of the proposed endeavor and why it is of national importance." The Petitioner was also asked to present documentary evidence that establishes his proposed endeavor's national importance.

In response to the Director's RFE, the Petitioner stated that he intended to focus on providing consulting projects for American companies in need of technological solutions through [REDACTED] his already established company, and asserted that this will have a ripple effect on the U.S. technology industry due to its "growing shortage of IT professionals, coupled with an intensive demand for tech-centered services." He further indicated that he would assist U.S. entities adapt to specific field technologies that will allow them to penetrate culturally diverse, and business complex, markets such as the Latin American market.

---

<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

The Petitioner submitted a letter of recommendation from [REDACTED] Federal Congressman in Brazil, stating that the Petitioner “has provided relevant services in several capital cities of the country, carrying out successful projects with national regulatory agencies such as: National Electrical Energy Agency – ANEEL; National Agency of Oil, Gas, and Biofuels – ANP and National Civil Aviation Agency ANAC.” [REDACTED] further stated that the Petitioner “is a highly qualified professional with an excellent reputation, for whom I can present my recommendation as being a person of full moral reputability.” Another letter from [REDACTED] Federal Agricultural Inspector for the Ministry of Agriculture, Livestock and Food Supply in Brazil, describes a project performed by the Petitioner and his company for the Ministry of Agriculture. Specifically, the writer states that the Petitioner “identified and mapped processes of relationship and viable legal instruments to make management of the process of protection of cultivars more efficient and effective in Brazil.” A third letter, from [REDACTED] Senator of the Republic of Brazil, states that he has witnessed the implementation of a series of innovative projects in Brazil, in which the Petitioner was an active participant, that have had a significant impact on the lives of many Brazilians in the administrative, energy, and technological innovation areas. He commends the Petitioner’s achievements and affirms his substantial contributions as an entrepreneur and leader.

The record also includes articles and reports which examine issues relevant to the importance of technology and the manner in which it enhances productivity and increases revenue in many diverse industries, as well as the shortage of IT professionals and its effects on most industries and the economy in general. In addition, the Petitioner submitted articles and reports which examine issues relevant to the importance of immigrant entrepreneurship in the United States, such as the economic significance of companies founded by immigrants and the impact of immigrant entrepreneurs as economic contributors. The record therefore demonstrates that the Petitioner’s proposed work has substantial merit, and we agree with the Director’s determination on this issue.

In the decision denying the petition, the Director determined that the Petitioner had not demonstrated the national importance of his proposed endeavor. The Director stated that the Petitioner had not shown that his undertaking “offers benefits that extend beyond his consulting company to impact the field more broadly.” The Director also indicated that the Petitioner had not demonstrated that his proposed endeavor would “have the potential to provide substantial positive economic effects to the region his business is located or the nation.”

On appeal, the Petitioner argues that contrary to the Director’s determination, the impacts of his contributions are not limited to his employees and respective clients. Rather, he asserts that as a result of the shortage of U.S.-based IT professionals, his proposed endeavor will offer innovative and forward-thinking solutions to the nation’s business industry, as well as fill a gap within the business field as related to technological services. The Petitioner repeatedly references his experience, education, and knowledge concerning business, technology, and entrepreneurship as the reason he will be able to provide these benefits to the United States. However, the Petitioner’s personal and professional qualifications 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 the Petitioner proposes to undertake has substantial merit and national importance under *Dhanasar*’s first prong.

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 “[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.

The Petitioner highlighted his past successes in Brazil in order to suggest that his proposed endeavor will have a similar impact. He asserts that his past experience and expertise will allow him to develop and maintain new innovative technology, which will maximize business revenue and ultimately increase the flow of money into the U.S. on a national level and increase the gross domestic product (GDP). While we acknowledge these claims, the record does not contain sufficient evidence to substantiate them.<sup>3</sup> For instance, the Petitioner has not demonstrated how his innovations will be on such a scale as to impact the national economy directly or indirectly. Similarly, he has not explained how his endeavor will create a revenue stream so substantial as to affect the GDP or tax revenue. Furthermore, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers. While the Petitioner claimed that he will allow U.S. companies to expand into foreign markets and that he can secure their success, he has not provided details concerning how he would do this nor has he identified any U.S. clients or companies seeking business in Brazil or Latin America. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *See id.* at 890.

The Petitioner submitted numerous recommendation letters, which praise the Petitioner’s personal and professional qualifications and set forth generalized examples of the value he offered in performing various government projects. The authors outline his work accomplishments and make general statements that assert his services would be beneficial should he immigrate to the United States. Clearly, the letter writers hold the Petitioner in high regard. However, the submitted letters do not sufficiently establish the prospective impact of the specific endeavor that the Petitioner will focus on should this petition be approved. The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters to determine whether they support the petitioner’s eligibility. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990). *See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”).

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. *See Dhanasar*, 26 I&N Dec. at 889. While the Petitioner’s statements reflect his intention to provide IT consulting and business services to companies and clients in the IT industry and various other business sectors, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his

---

<sup>3</sup> The burden of proof is on the Petitioner in the current matter. Section 291 of the Act.

proposed endeavor rises 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. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his current company and its clientele, or other individual clients or companies, to impact the IT consulting field or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from his IT consulting and business projects and innovations would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

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. 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) (“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 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 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.