



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

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

In Re: 20478829

Date: MAR. 22, 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 an individual of exceptional ability, 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 did not qualify for classification as an individual of exceptional ability, and that he had not 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 submits additional documentation and a brief asserting that he is eligible for exceptional ability classification and 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. 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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: “*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, 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

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<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).

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) 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

### A. Exceptional Ability

The Petitioner asserts that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. In denying the petition, the Director determined that the Petitioner fulfilled only the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). Upon review of the arguments and evidence presented on appeal, we conclude that the Petitioner also meets the ten years of full-time experience criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) and the salary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D). The evidence is sufficient to demonstrate that the Petitioner meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and that he has achieved the level of expertise required for exceptional ability classification.

### B. National Interest Waiver

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 plans to "continue using my expertise and knowledge in the fields of business development, business management, marketing strategy, financial management, and strategic partnerships by working as an entrepreneur in the U.S." He stated that he intends to "contribute directly to the entrepreneurial field, helping U.S. businesses improve their strategies and practices."

The Director issued a request for evidence (RFE) asking the Petitioner to provide further information and evidence regarding his proposed endeavor in the United States. In response, the Petitioner asserted that that his undertaking involves contributing "to the development of U.S. businesses upon delivering well-sought information technology (IT) strategies." He indicated that he planned "to serve U.S.

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

individuals, institutions, government, and corporations with high-quality IT solutions based on software development.”

The Petitioner submitted the business plan for his company, [REDACTED] “a Florida-based company that provides various high-quality IT solutions with a focus on software that can improve managerial, enterprise resource planning (ERP), and accounting processes.”<sup>3</sup> This business plan includes industry and market analyses, information about his company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner’s work experience in Brazil, and a description of company personnel. Regarding future staffing, the Petitioner’s business plan anticipates that [REDACTED] will employ six personnel in year one, nine in year two, 12 in year three, 15 in year four, and 18 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, while his plan offers sales projections of \$375,100 in year one, \$517,638 in year two, \$741,812 in year three, \$964,356 in year four, and \$1,202,120 in year five, he did not adequately explain how these sales forecasts were calculated.

The Petitioner also provided recommendation letters from colleagues who discuss his IT skills and business projects.<sup>4</sup> For example, [REDACTED] executive director at [REDACTED] [REDACTED] stated that the Petitioner “has deep technical and operational knowledge in network infrastructure maintenance, software development, accounting, tax, project management, and systems implementation.” Additionally, [REDACTED] product director with [REDACTED] [REDACTED] asserted that he and the Petitioner worked together on a project for the [REDACTED] supermarket chain involving development of a “database with the ability to process daily the movement of all stores with individualized information on the products sold.” [REDACTED] indicated that the Petitioner “spent four months preparing this scenario and we had the approval of one of the most respected auditing companies in the world, [REDACTED] showing that we achieved the results, attesting to [the Petitioner’s] quality, leadership, and professional attitude.”

Likewise, [REDACTED] president of [REDACTED] asserted that he relied on the Petitioner’s “expertise in the technology companies’ market and knowledge of commercial techniques and customer service, in addition to his expertise in the area of Information Technology, to make the decision of hiring his services to help restructuring and improving our company.” In addition, [REDACTED] [REDACTED] president of [REDACTED] stated that “the project developed by [the Petitioner’s] service provision, although recent, has already brought significant positive impacts to our employees and customers in the last few months, in addition to the strategic, financial, and operational contributions and results to the company.”

The record includes information about immigrants’ contribution to U.S. entrepreneurship, the long-term strategic vision of entrepreneurs, the economic value of entrepreneurship, immigrant entrepreneurs as business creators, immigrants as drivers of innovation and growth, and U.S. talent shortages and understanding the needs of workers. In addition, the Petitioner provided articles discussing technology as a top business priority, the IT industry outlook, foreign born entrepreneurs

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<sup>3</sup> The plan states that “[t]hese digital solutions include IT consulting, software implementation, antivirus implementation, firewall configuration, app development, and specific software development, thus bringing modernization and automation to any type of business.”

<sup>4</sup> While we discuss a sampling of these letters, we have reviewed and considered each one.

as drivers of American innovation, entrepreneurs' involvement in promoting a more inclusive economy, the economic imperative of investing in diverse entrepreneurs, and the U.S. economy and fiscal system's need for immigrants. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

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 "has implications beyond his prospective employers/clients, their business partners, alliances, and/or clients or customers at a level sufficient to demonstrate the national importance of his endeavor." The Director also indicated that the Petitioner had not demonstrated that his proposed work stands to "have national or even global implications or substantial positive economic effects, generate tax revenue, engage in job creation, etc., that would be considered commensurate with national importance."

In his appeal brief, the Petitioner argues that his proposed endeavor "has palpable broader implications, as its results are disseminated to other professionals in the Business/Software Market." He contends that "the broader implications of [his] work are demonstrated by the several probative letters . . . whose authors . . . testify to the dissemination of [his] work throughout the Business/Software Industry."<sup>5</sup> As mentioned above, the recommendation letters from the Petitioner colleagues focus on the Petitioner's IT skills, business knowledge, work projects, and experience in his field rather than the national importance of his proposed endeavor. Similarly, the appeal brief lists of the Petitioner's work experience for [redacted] and [redacted]. The Petitioner's skills, knowledge, and prior work in his field 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. The letters from the Petitioner's colleagues do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that his proposed work offers broader implications in business, the software industry, or the IT field that rise to the level of national importance.

Furthermore, the Petitioner asserts that proposed endeavor stands to "foster innovation in business" which "brings broad implications in smarter apps, improved data storage, faster processing, and wider information distribution." He indicates that innovation "makes businesses run more efficiently," "increases value, enhances quality, and boosts productivity." The Petitioner also states: "Businesses that embrace the innovation paradigm tend to have more accurate business planning, more effective marketing, higher global sales, more systematic management, access to real time monitoring, as well as instant customer support." In addition, he contends that his "specialized services in advancing Business' IT solutions" allow businesses to benefit from complex problem solving; informed decision making; and improved marketing, customer support, and resource management. Moreover, the Petitioner claims that his proposed work "create[s] room for businesses to prosper and thrive" and "offers palpable broader implications."

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

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<sup>5</sup> The Petitioner's brief does not specifically identify the authors who attest to the dissemination of his work in "the Business/Software Industry."

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.

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 valuable business and IT services for his companies’ clients, 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. 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 companies’ and their clientele to impact the IT industry 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. Specifically, he has not shown that his U.S. company’s future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the sales forecast for [REDACTED] indicates that his company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from the Petitioner’s undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. In addition, although the Petitioner asserts that his company will hire U.S. employees, he has not offered sufficient evidence that the area where [REDACTED] operates is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. 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. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### 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. 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.