



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

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

In Re: 22623331

Date: NOV. 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 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. *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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he 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 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.

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,¹ 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.

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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether they are 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 noncitizen’s qualifications or the proposed endeavor, it would be impractical either for the noncitizen 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 noncitizen’s contributions; and whether the national interest in the noncitizen’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together,

¹ 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).

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.²

II. ANALYSIS

The Director determined that 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.

The Petitioner states that he is a “successful executive and entrepreneur with over 15 years of diversified working experience in the field with distinctive leadership attributes.” With respect to his proposed endeavor, the Petitioner indicated that he intends to work in the United States as a General and Operations Manager of [redacted] an [redacted] ice cream factory based in [redacted] Florida with 121 sales locations. The Petitioner claimed that he will “oversee all of the company’s establishments, operations, and expansion plans,” including “overseeing the executive management of the company, establishment of goals and policies, [and] corporate decision-making with respect to administrative, commercial, marketing, financial and budgetary issues,” noting that the company is looking for new markets outside of the state of Florida.

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 offered a business plan, indicating that the projected revenues for [redacted] for the next ten years will rise to \$335 million, and that the company’s brand will be sold in 14,840 locations across the United States. The plan also indicated that 550 additional jobs will prospectively be created after the construction of two new factories in Texas and Georgia, respectively. The Petitioner further stated:

The company’s [redacted] ice cream is present in fifteen (15) states in the country at some of the most important supermarket chains in the country as evidenced by emails attached.³ The projected sales of the company in the next ten (10) years will create additional job opportunities in Florida, Georgia, and Texas while also indirectly supporting jobs associated with the import, sales, commercialization and marketing of its products. In turn, this will have an impact on the economies of those states by creating local job opportunities associated to [redacted] local production and sales.

In sum, the national importance of [redacted] is being proven by overwhelming evidence of the company’s substantial economic impact: as to the national ice cream business, the potential to [maintain] and [create] new jobs all in states where the product is currently being sold and the new markets it will reach in the next years, as well as its massive production of sales at giants such as Walmart, Target, and Publix, among other things.

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

³ Copies of the Petitioner’s agreement exchange with Whole Foods, Walmart, Target, Sam’s Club, Winn Dixie, Southeastern Grocers, Kroger, and The Healthy Edge Retail Group were submitted in support of this assertion.

The Petitioner's RFE response included a letter of recommendation from [redacted] President of Sales for [redacted] [redacted] states that [redacted] is the exclusive distributor of [redacted] products, and praises the Petitioner's business and distribution models for the company's products. The Petitioner also submitted an economic report prepared by [redacted] showing the proposed economic impact of the [redacted] project from 2021 to 2030, as well as a copy of [redacted] organizational chart, state and federal quarterly tax returns, and sales agreements with Target and [redacted]

In the decision denying the petition, the Director determined that although the Petitioner had demonstrated that his endeavor had substantial merit, he had not established the national importance of his proposed endeavor. The Director noted that the business plan provided only speculative future projections not supported by current tax records or other supporting documentation such as audited financial statements. The Director also indicated that the business plan did not provide specific details on startup funding interests from prospective investors for the future expansion of the company. The Director determined that the Petitioner had not shown "that benefits to the regional or national economy resulting from the proposed endeavor would reach the level of 'substantial positive economic effects' contemplated by *Dhanasar*." In conclusion, the Director stated that the Petitioner had not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or other substantial positive economic effects.

In his appeal brief, the Petitioner argues that the economic report by [redacted] submitted in response to the RFE demonstrated the economic impact of the [redacted] project, noting that the report indicated that direct jobs associated with the project may increase from 53 in 2021 to 553 in 2030, indirect and induced jobs may go from 22 in 2021 to 1,062 in 2030, and that earnings of employees may grow from \$3 million in 2021 to \$63.9 million in 2030. The Petitioner noted that this report used the Regional Input-Output Modeling System (RIMS II), based on the U.S. Bureau of Economic Analysis's national supply use tables,⁴ to analyze how projects will ripple throughout county, state, or regional economies. The Petitioner concluded that, based on the multipliers mentioned in the economic report, the record demonstrated that his endeavor "has significant potential to employ U.S. workers in the states of Florida, Georgia and Texas with benefits that extend beyond the local community and impact the industry of frozen desserts on a national level."

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.

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

⁴ The Petitioner noted that these tables show the goods and services produced by hundreds of industries and how those goods and services flow to other industries or consumers, for a comprehensive picture of relationships throughout the U.S. economy.

Petitioner's statements reflect his intention to expand the production and distribution of frozen products, 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 Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his current company and its customers to impact the frozen dessert 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. The Petitioner did not supplement the record with evidence such as business records, bank statements, or real estate investment proposals demonstrating the current level of investment in his company or the availability of resources to fund the proposed construction of the new factories in Georgia and Texas. Nor did the Petitioner submit tax records or financial statements to evidence the company's current revenue levels. While the business plan and economic impact report prepared by Points Consulting suggest that his company has growth potential, such documentation standing alone 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*. *Id.* at 890. In addition, although the business plan and economic impact report provide projections on direct and indirect job creation, the Petitioner has not offered sufficient evidence that the areas where his company will operate are economically depressed, that he would employ a significant population of workers in those areas, or that his endeavor would offer the regions or their populations a substantial economic benefit through employment levels, business activity, or tax revenue.⁵ 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).

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 projects 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. 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.

⁵ The Petitioner's evidence does not specify where the created direct and indirect jobs' workplaces would be located, and whether those job creations would have substantial positive economic effects in the context of those areas.

ORDER: The appeal is dismissed.