



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

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

In Re: 23102219

Date: NOV. 30, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a financial manager, 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 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 discretion¹, 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)

¹ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 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.²

II. ANALYSIS

The Director found 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.

With respect to his proposed endeavor, the Petitioner initially indicated that he intends to continue “working as a financial manager in the United States.” He stated that he is currently employed “as a cost analyst for the design and architecture company, [REDACTED] in [REDACTED] Florida. I analyze and manage the company’s costs and expenses, and overall operational efficiency with respect to finances. I also oversee and negotiate prices with suppliers and prepare as well as . . . present financial reports to executive management in order to evaluate financial performance.”³

The Director issued a request for evidence asking the Petitioner to provide further information and evidence regarding his proposed endeavor and its national importance. In response, the Petitioner asserted that he planned “to work as a financial manager in the financial field . . . through the development and expansion of my U.S. company, [REDACTED].”⁴ He explained that [REDACTED] “is a Florida-based company that will specialize in providing various high-quality, comprehensive accounting and financial industry services. The company will also provide investment and consulting services to both U.S. and Latin American investors.” The Petitioner further stated:

In a nutshell, [REDACTED] will provide management consulting and training services to new businesses, offering effective financial and accounting solutions, in addition to being dedicated to attracting foreign investment. Within the accounting and financial advisory business segment, the company will provide a wide range of services, such as financial statements preparation, budget preparation, cash flow management, business valuation, new business formation, internal controls, due diligence, financial planning and investments, international business services, SBA loan assistance, auditing, and consulting. Additionally, the company will offer accounting and bookkeeping services, as well as QuickBooks setup and in-depth training. It will also support its clients in applying for a mortgage/refinance or loan and will also provide notary and payroll services.

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

³ In response to the Director’s request for evidence, the Petitioner provided a December 2021 letter from [REDACTED] indicating that he has worked for the company as a “Financial Business Accountant” since September 2019. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about these positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* framework.

⁴ The record contains documentation relating to the Petitioner’s formation of this company, including its registration as a limited liability company in Florida and its Internal Revenue Service Employer Identification Number.

The Petitioner submitted the business plan for [REDACTED] 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, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that [REDACTED] will employ two personnel in year one, six in year two, eight in years three and four, and ten 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 \$268,990 in year one, \$436,850 in year two, \$570,655 in year three, \$606,175 in year four, and \$741,725 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 work experience and financial projects.⁵ For example, [REDACTED] chief executive officer (CEO) at [REDACTED] [REDACTED] asserted that the Petitioner "did a spectacular valuation project for [REDACTED] company, besides presenting a financial analysis of the company, with balance sheets and income statements and cash flow projections, with different scenarios, with past, present and future. He also used a beautiful analysis of financial ratios." Likewise, [REDACTED] CEO at [REDACTED] indicated that the Petitioner assisted her "with various complex and analytical projects such as business valuations and due diligence related work." [REDACTED] further asserted that the Petitioner helped her with a "client and surprisingly, he quickly learned and understood the client, reading a Xero system, which is widely used in Europe, and incorporating the numbers into QuickBooks, which is widely used here in the U.S. by accounting companies and small and medium-sized companies." 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 accounting, the financial services industry, or the financial management field that rise to the level of national importance.

The record includes information about talent concerns in the financial services industry, skilled labor shortages in the financial and business services sector, financial manager duties, access to financial services as a way to foster economic development, the relevance of retail banking, the advantages of foreign portfolio investment, and the financial manager job outlook. In addition, the Petitioner provided articles discussing the functions of a money manager, capital investments in the United States, the stock market's effect on the U.S. economy, consumer trust in the financial services industry, the benefits of international investment, top global economies, foreign direct investment in the United States, and the projected shortage of financial advisors. He also submitted information about the U.S. financial services industry, the benefits to the U.S. economy resulting from international trade and investment, the value of foreign direct investment to the U.S. economy, the investment management industry outlook, international investment's effect on the global economy, talent shortages in the financial industry, and immigrant hiring in the United States. The record therefore shows that the Petitioner's proposed endeavor has substantial merit.

⁵ While we discuss a sampling of these letters, we have reviewed and considered each one.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not demonstrated that his undertaking “stands to sufficiently extend beyond his employer to impact the industry or field more broadly.” The Director also indicated that the Petitioner had “not shown that benefits to the regional or national economy resulting from his proposed endeavor would reach the level of ‘substantial positive economic effects.’”

In his appeal brief, the Petitioner points to an “impending shortage of financial professionals that the United States is already beginning to face” and asserts that he will be addressing an industry labor “shortage, one which cannot be addressed by U.S. workers alone, as demand exceeds supply.” We are not persuaded by the Petitioner’s claim that his proposed endeavor has national importance due to the shortage of professionals in the financial services industry. Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner also contends that his proposed endeavor stands to “generate substantial ripple effects upon the key commercial and business activities on behalf of the United States – namely, serving the financial management and business functions of U.S. companies.” He states that his undertaking is “a vital aspect of U.S. companies’ finance and operations – which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy.” Additionally, the Petitioner argues that his undertaking stands to affect the national economy by “[o]ffering economic convenience and agility through finance,” “[p]rioritizing the domestic job market,” and “[d]riving competitive advantage for U.S. companies that wish to expand and internationalize their operations.” He further indicates that his “proposed endeavor will also contribute to tax revenue, and ultimately help increase the flow of money in the U.S. on a national level, which will contribute to an enhanced U.S. gross domestic product (GDP).” Moreover, the Petitioner claims that his undertaking will generate “jobs for U.S. workers,” improve “the wages and the working conditions for the U.S. workers,” and help “the local community bring investments to the region.” Furthermore, the Petitioner asserts that his proposed work stands to “help the U.S. stay competitive by bringing competitive services, helping develop the country, and producing income for the U.S. economy.”

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 Petitioner’s statements reflect his intention to provide valuable financial and accounting services for

his U.S. employer, his company, and their 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 Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his employer, his company, or their clientele to impact the financial management field, the financial services 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 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 the Petitioner's company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his company will generate "jobs for U.S. workers," he has not offered sufficient evidence that the area where his company 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, tax revenue, 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.