



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

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

In Re: 26083795

Date: APR. 25, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, an entrepreneur, seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for EB-2 classification as an advanced degree professional, but that the record did not establish that a waiver of the classification's job offer requirement would be in the national interest. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 immigrant classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national

interest waiver petitions. *Dhanasar* states that USCIS may, as a matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director found that the Petitioner qualifies for EB-2 immigrant classification as a member of the professions holding an advanced degree and that the proposed endeavor has substantial merit. However, the Director concluded that the Petitioner did not establish the national importance of the proposed endeavor or that, on balance, waiving the job offer requirement would benefit the United States. The Director did not make a finding as to the second prong of the *Dhanasar* framework—whether the Petitioner is well-positioned to advance his proposed endeavor. However, as discussed below, because we conclude that the Petitioner has not established the national importance requirement, we need not reach the question of whether he has established either the second or third prongs of the *Dhanasar* analytical framework and we reserve our opinion regarding those 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”).

The Petitioner possesses the foreign equivalent of a bachelor’s degree in business administration and has experience in operating various businesses in Brazil, including supermarkets. He proposes to work as an entrepreneur, stating that he will “expand [his] already existing U.S. business, [REDACTED] and thus launch a network of auto dealerships and repair facilities, beginning in the state of Florida.” He further states that he has “identified a need and rising demand for Latin American food products in the U.S. market” and that he intends to invest in a series of supermarket units. He states that he will “manage and invest up to five (5) units at first glance, with the opportunity to expand in the future.” The supermarkets will “mainly import products from Latin American countries, with the aim of offering well-known brands to the Hispanic population in Florida.” The evidence in the record focuses only on the Petitioner’s plan to establish the supermarket business. Although he mentions his intent to expand his existing auto dealership business in his initial statement, the Petitioner did not submit other evidence relating to the expansion of that business either in response to the Director’s request for evidence (RFE), or on appeal. Therefore, the discussion below related to national importance focuses solely on the Petitioner’s claimed endeavor related to supermarkets.

As stated above, the Director found that the Petitioner did not demonstrate eligibility under the first prong of the *Dhanasar* framework because he did not establish the national importance of his proposed endeavor. The Director noted that the Petitioner did not provide evidence relating to the statement that he intends to grow the operations of his existing business in the United States, [REDACTED]. Rather, the evidence focuses on the Petitioner’s plan to establish and grow his supermarket business. In his decision, the Director quoted from the RFE, which stated that the record did not establish that the potential amount of job creation, wages paid, and business revenue from the endeavor

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).

would result in the “substantial positive economic effects” necessary for national importance, or that his work would have broader implications for the field of auto sales or entrepreneurship. In his decision, the Director concluded that the additional documentation submitted in response to the RFE did not overcome these deficiencies. Specifically, the Director found that the Petitioner’s business plan for his supermarket endeavor relied on flawed and misleading calculations and did not provide reasonable projections. Additionally, the Director noted that the Petitioner did not provide documentation of the \$500,000 that he claims to have available for investment into the business and questioned whether this claimed amount would even be sufficient to fund the proposed scale of the Petitioner’s endeavor. Finally, the Director noted that the address provided in the business plan is a residential property, and not a commercial property that would be appropriate to establish a supermarket.

As an initial matter, we note that the Petitioner asserts on appeal that he was deprived of due process and “fair treatment” because the Director denied the petition based upon the initial filing without first issuing an RFE and granting the Petitioner the opportunity to submit additional evidence. The Petitioner states that this a “violation of Due Process and fair treatment under USCIS policy, the United States Constitution, and international treaties.” However, the record reflects that the Director did in fact issue an RFE on May 6, 2022, and further that the Petitioner responded to this RFE on or around September 30, 2022, with additional documentation. As such, we conclude this argument is without merit.²

On appeal, the Petitioner claims that the Director erroneously applied the law and improperly “imposed novel substantive and evidentiary requirements beyond those set forth in the regulations.” However, the Petitioner does not specify what these novel requirements are nor identify a specific error in the Director’s application of the law. The Petitioner also makes general assertions that the Director did not apply the proper standard of proof and did not give due regard to the evidence in the record. However, the Petitioner does not support these assertions with specificity as to the record or to the Director’s conclusions. The Petitioner also claims that because he is a “high-skilled” entrepreneur, his endeavor is “inherently nationally important, as per USCIS’ updated guidance from January 21, 2022.” However, we do not find support for this claim in the January 21, 2022 updates to the USCIS Policy Manual regarding national interest waivers. The policy update that the Petitioner references explains how the *Dhanasar* framework can apply to entrepreneurs but does not state that an entrepreneurial endeavor is “inherently nationally important.”³ As such, we conclude that these claims do not sufficiently identify an error in Director’s decision nor establish the national importance of the proposed endeavor.

The Petitioner also claims on appeal that he has established his endeavor’s national importance because of the “vital role” of entrepreneurship to the U.S. economy. The Petitioner cites articles and studies from the Bureau of Labor Statistics and other organizations in support of this claim. The Petitioner also cites to a Harvard Business Review article that claims that immigrants are more likely to be entrepreneurs than the general population. But the studies and articles cited by the Petitioner on appeal, as well as the ones already in the record, do not discuss the Petitioner or his proposed endeavor.

² Moreover, we note that although the Director did issue an RFE and provided the Petitioner the opportunity to supplement the record, USCIS may deny a benefit request without first issuing an RFE if the initial evidence submitted does not establish eligibility. See 8 C.F.R. § 103.2(b)(8)(iii).

³ See generally 6 USCIS Policy Manual F.5(D)(4), <http://www.uscis.gov/policy-manual>.

Rather, the evidence relates to entrepreneurship and the economy in general, not to the Petitioner's proposed endeavor of establishing one or more supermarkets. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." See *Matter of Dhanasar*, 26 I&N Dec. at 889. As such, we conclude that the articles and studies raised by the Petitioner do not establish that his specific proposed endeavor has national importance.

Next, the Petitioner asserts on appeal that the proposed endeavor "impacts nationally important matters" because he is "able to secure the success of small and medium sized U.S. companies;" he is "promoting growth and expansion and [driving] change with innovation;" and that his business "leads to the generation of new jobs for American workers." An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Matter of Dhanasar*, 26 I&N Dec. at 890. However, the Petitioner's business plan projects that by year five of operations, his supermarket business will have created 80 jobs. Even were we to conclude that the projections in the business plan are well-founded, which we do not, the Petitioner does not establish that this number of jobs created over a five-year period would result in substantial economic effects, nor that his business would be in an economically depressed area. Moreover, the assertions that the Petitioner is "securing the success of small and medium sized U.S. companies" or "[driving] change with innovation" are not supported by the evidence in the record, and the Petitioner's unsupported assertions alone are not sufficient for the Petitioner to meet his burden of proof to establish the national importance of his proposed endeavor.

Finally, the Petitioner attempts to clarify on appeal the questions that the Director raised regarding the location of the business and claimed investment amount. The Petitioner confirms on appeal that the location for the supermarket business provided in the business plan is a residential address, but states that the Petitioner used this address only "as a home office for the start of the company" and that the Petitioner does not "intend to use the residential property to operate his supermarket." The Petitioner further states that the investment amount will be through his personal savings, investments, and reinvestment through the growth of the company. But the Petitioner still does not provide on appeal documentation of his claimed \$500,000 in personal savings through which he would start the business, which was one of the deficiencies the Director noted. Further, accepting that the location stated in the business plan represents only a home office, the business plan does not state an actual proposed location or potential locations for the Petitioner's supermarket. Without an actual or proposed location for the business, the projected expenses for rent, utility, and insurance do not have a clear basis, and we cannot assess whether the business plan's stated expenses and revenue projections are credible. We conclude that, even with the Petitioner's clarifications on appeal, he has not overcome the business plan's deficiencies nor established that the proposed endeavor has national importance.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the third prong of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility under the first prong, we reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. See *INS v. Bagamasbad*, 429 U.S. at 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.