



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 26376363

Date: APR. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) project manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this 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 the record did not establish the Petitioner's eligibility for a national interest waiver under the Dhanasar framework. 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 visa 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, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>1</sup>, grant a national interest waiver if the petitioner demonstrates that:

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<sup>1</sup> 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).

- 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 determined the Petitioner qualifies for the underlying EB-2 classification. Therefore, the remaining issue is whether the Petitioner established eligibility for a national interest waiver under the Dhanasar framework. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The first prong, substantial merit and national importance, focuses on the specific endeavor the individual 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. Dhanasar, 26 I&N Dec. at 889.

In his professional plan and statement, the Petitioner set forth his intention to deliver high-impact technological solutions as an IT project manager. In response to the Director's request for evidence (RFE), he explained his proposed endeavor involves running his own IT business in Florida. While the Petitioner provided details regarding his planned employment, the evidence does not sufficiently establish the national importance of the endeavor. Specifically, the Petitioner has not established that the benefit of his services will extend beyond his clients, company, and/or employer. Further, he submitted little evidence to establish how his specific endeavor would influence the IT field or otherwise impact the nation. For instance, the record does not reflect that his services are different, better, or cost less than other IT services, nor has the Petitioner presented evidence to establish his services would be available on a scale that rises to the level of national importance.

Documents in the record mention that the Petitioner will offer benefits to the United States through foreign direct investment, as well as that he could offer benefits to businesses conducting or planning to conduct business in Brazil. While we acknowledge these claims, the Petitioner has not sufficiently explained how his IT services in Florida would involve those activities to such an extent that it impacts the field of IT or the nation as a whole.

The Petitioner referenced a nationwide shortage of IT and Science Technology Engineering Mathematics (STEM) professionals, the monetary value of the IT industry, its growth potential, and the importance of IT work to the nation's economy. In support, he submitted articles and reports that provide helpful background information on these matters. However, none of the reference materials discuss the Petitioner's specific proposed endeavor. We acknowledge the importance of IT and STEM fields, and also of addressing the nation's shortage of IT professionals; however, the Petitioner has not sufficiently explained how his work as an IT project manager and entrepreneur would resolve the shortage or produce an impact rising to the level of national importance.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; but rather, "the specific endeavor that the foreign national proposes to undertake." See *id.* Other relevant questions are what the broader implications of

the proposed endeavor are and how the endeavor may have national importance, for example, because it has national or even global implications within a particular field. Here, the Petitioner improperly relies upon the importance of the industry as sufficient to establish the national importance of his proposed endeavor.

We reviewed the Petitioner's business plan in which he described his vision, mission, and the services he will provide. He provided five-year growth projections in income, salary payment, and tax revenue. He also explained that his services will make his clients more efficient and productive such that their businesses will positively contribute to the economy as well. However, the Petitioner has not provided a sufficient foundation or corroborating details to support the growth projections he provided in his business plan. As such, these figures appear to be little more than conjecture.

The Petitioner asserted he will bring benefits to areas of economic depression. In support, he cited poverty statistics for various counties in Florida. Even if these poverty statistics evidenced economic depression in those areas, the Petitioner has not explained how the benefits of his endeavor would reach these counties. For instance, the Petitioner has not presented sufficient evidence showing that the physical location of his business will be in one of these counties such that it might readily provide a source of jobs, nor has he demonstrated that he will predominantly or exclusively hire and serve individuals living in those areas. Therefore, we cannot conclude the Petitioner's endeavor offers substantial positive economic effects in an economically depressed area.

Although the Petitioner highlighted that his endeavor would positively impact the economy, tax revenue, and job creation, he has not offered sufficient evidence to corroborate these claims. We acknowledge the Petitioner's argument that through his services, the companies that hire him can be more productive in providing services to others and that the benefits of a productive, well-functioning business extend beyond the individual organization. However, the record lacks sufficient evidence to establish a strong connection between the proposed endeavor activities and job creation or tax revenues on a level commensurate with 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. Similarly, the proposed endeavor may very well positively impact the individuals and businesses that engage the Petitioner for his services, but the evidence does not suggest the Petitioner's services will be available broadly to the public or on a level that creates national or global implications in the IT field.

While any basic economic activity, including entrepreneurial endeavors and IT services, has the potential to positively impact the economy, the Petitioner has not demonstrated how the economic activity his proposed endeavor generates will rise to the level of affecting the U.S. economy. 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 services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

We reviewed the letters of recommendation in which the authors praise the Petitioner's expertise, work ethic, and the successful results he achieved for his employer, their clients, and on specific projects. However, these letters do not discuss the proposed endeavor or provide specific details on its national importance. Furthermore, they do not demonstrate that the Petitioner impacted the IT field or the nation as a whole. Therefore, the letters do not offer support for a conclusion that the proposed endeavor has national importance.

In his brief on appeal, the Petitioner asserts the Director violated his due process rights "by issuing a denial without warranting [sic] the Appellant the opportunity to present additional evidence and cure any questions raised by the adjudicating Officer. . . ." However, in the same brief, the Petitioner acknowledges receipt of an RFE and references his response to it. Furthermore, the Petitioner's RFE response states, "[a]ccording to your RFE letter, the evidence is insufficient to establish [the Petitioner's] proposed endeavor and whether it has substantial merit and national importance." Accordingly, we conclude the Petitioner had an opportunity to present additional evidence and address identified deficiencies. As such, it is not apparent how the Director deprived the Petitioner of his due process rights.

Also on appeal, the Petitioner contends the Director did not duly consider certain pieces of evidence and failed to apply the correct standard of proof when reviewing the evidence. In support, he relies primarily upon the evidence and arguments previously submitted. The Petitioner emphasizes that Dhanasar does not state that a proposed endeavor must create a significant number of jobs but rather must only have a significant potential to employ U.S. workers. While we acknowledge the distinction, the Petitioner has not offered sufficient evidence to establish his endeavor's potential is significant.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision. Therefore, 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 would serve no meaningful purpose.

### III. CONCLUSION

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the Dhanasar framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

As the Petitioner has not met the requisite first prong of the Dhanasar framework, we conclude he has not established eligibility for a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.