



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

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

In Re: 27893184

Date: AUG. 1, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as an individual of exceptional ability. *See* 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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. The Director did not determine whether the Petitioner qualifies for classification as an individual of exceptional ability or, in the alternative, as a member of the professions holding an advanced degree. However, the Director concluded 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. 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. 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.

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, USCIS may, as a matter of discretion, 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As noted above, the Director did not address whether the Petitioner qualifies for second-preference classification as either an individual of exceptional ability or as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act. However, because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See id.*; *see also 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"); *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).

Initially, the Petitioner described the endeavor as a plan to "manag[e] and operat[e] my own company . . . operating in the housing and construction sector to develop design & remodeling projects." The Petitioner elaborated that his company "will provide low-cost residential remodeling services . . . in suburban districts of the [redacted] metropolitan area." The Petitioner further asserted, "by the company's fifth year, I also intend to hire a total of 122 American employees – and I will invest a total of USD \$2,721,766 over 5 years, including my own \$100,000 of start up ignition capital." The Petitioner also submitted an undated business plan for his residential remodeling services company.

In response to the Director's request for evidence (RFE), the Petitioner reiterated that the proposed endeavor entails a plan "to develop a construction company . . . in the state of Florida." The Petitioner also reiterated that his company "will operate in the house construction sector to develop interior design and remodeling projects with affordable options" and that the company would "generat[e] about one hundred twenty-two (122) (full-time and part-time) employees." The Petitioner further stated that he expects "total payment of wages of approximately 16,397,773 million dollars [sic] in the first five (5) years." We note, however, that total wages of \$16,397,773 for 122 workers, divided by five years, is an average annual wage of \$26,881.59 per worker. The Petitioner also resubmitted a copy of the undated business plan for his residential remodeling services company in response to the Director's RFE.

The Director concluded that the record did not "demonstrate that [the Petitioner's] business stands to impact the regional or national population at a level consistent with having national importance." The Director noted that the record did not establish that "the rate of pay [the Petitioner] intends to pay his current or prospective employees would have 'substantial positive economic effects' such as revenue

or job creation.” The Director also concluded that the record did not establish that the Petitioner’s “particular work would have broader implications for the construction field.” The Director acknowledged that the Petitioner “highlights that there is an occupational shortage in the United States” but the Director also observed that “such a shortage does not, by itself, establish that [the Petitioner’s] work stands to impact the broader field or otherwise have implications rising to the level of national importance.” Ultimately, the Director concluded that “the [P]etitioner has not established that the proposed endeavor is of national importance,” as required by the first *Dhanasar* prong. The Director also concluded that the record did not establish that the proposed endeavor has substantial merit, also required by the first *Dhanasar* prong, and that the record did not satisfy the second and third *Dhanasar* prongs. See *Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner reiterates his education and prior work experience and he asserts that generalized industry reports and articles in the record “demonstrate the national importance of the [Petitioner’s] proposed endeavor; as well as the steep shortage in the U.S. of professionals with [the Petitioner’s] profile in the field.” The Petitioner also asserts that the “proposed endeavor is national in scope, as his professional activities relate to a matter of national importance and impact, particularly because they generate substantial ripple effects upon key commercial and business activities on behalf of the United States—namely, serving the business management and functions of U.S. companies.”

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

First, the Petitioner’s focus on appeal on his education and prior work experience with regard to the first *Dhanasar* prong is misplaced. Although an individual’s education and prior work experience is relevant to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—they are irrelevant to the first *Dhanasar* prong—whether a particular, prospective, proposed endeavor has both substantial merit and national importance. See *id.* at 888-91.

Next, the Petitioner’s focus on appeal on generalized industry reports and articles in the record is misplaced. As noted above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” See *id.* at 889. None of the generalized industry reports and articles in the record specifically discuss the Petitioner, the proposed endeavor, and how the particular proposed endeavor may have “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” or broader implications, such as “significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90. Therefore, the generalized industry reports and articles are irrelevant to determining whether the proposed endeavor may have national importance. See *id.*

Next, the Petitioner's own statements in the record do not support his assertion on appeal that he will "serv[e] the business management and functions of U.S. companies" and, thus, "generate substantial ripple effects upon key commercial and business activities on behalf of the United States." As discussed above, the Petitioner described the proposed endeavor as a plan to "manag[e] and operat[e] my own company . . . operating in the housing and construction sector to develop design & remodeling projects [and] provide low-cost residential remodeling services . . . in suburban districts of the [redacted] metropolitan area." Thus, the proposed endeavor would serve the business management functions of one U.S. company—the Petitioner's own company—not that of multiple "U.S. companies" as asserted on appeal. Moreover, the record does not reconcile how the Petitioner would generate "ripple effects upon key *commercial* and *business* activities" by providing "*residential* remodeling services" to his residential clients, other than the commercial and business activities of the Petitioner's own business and its suppliers of materials and equipment—if any (emphasis added). Although the record establishes that the proposed endeavor will benefit the Petitioner's own company and its residential clients, the record does not establish that the proposed endeavor will have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We note that the Petitioner's business plan, as discussed above, proposes to employ 122 workers within the first five years of operation. The record further indicates that the Petitioner's proposed employees would work "in suburban districts of the [redacted] metropolitan area." However, the record does not establish the significance of employing 122 workers in the suburban districts of the [redacted] metropolitan area, particularly in the residential construction and remodeling industry, in order to determine whether such employment would amount to broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area," or otherwise establish national importance. *Id.* Furthermore, as discussed above, we acknowledge that the Petitioner stated he expects "total payment of wages of approximately 16,397,773 million dollars [sic] in the first five (5) years." However, as noted above, total wages of \$16,397,773 for 122 workers, divided by five years, is an average annual wage of \$26,881.59 per worker. The record does not establish how paying 122 workers "in suburban districts of the [redacted] metropolitan area" an average annual wage of \$26,881.59 per worker would have "substantial positive economic effects." *See id.*

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 reserve our opinion regarding whether the record establishes that the proposed endeavor has substantial merit, also required by the first *Dhanasar* prong, and whether the record satisfies the second or third *Dhanasar* prong. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

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 eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.