



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

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

In Re: 27464138

Date: AUG. 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology consultant, seeks employment-based second preference (EB-2) 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 qualified for classification as a member of the professions holding an advanced degree, but that he 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.

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. If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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:

- The proposed endeavor has both substantial merit and national importance;

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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 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 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 provide his expert knowledge and skills in information technology to small businesses and companies in the United States.” In response to the Director’s request for evidence (RFE), the Petitioner stated:

The Petitioner’s proposed endeavor is to consult and provide specialized technology services and devices to companies in the United States. He would significantly impact businesses in the United States by providing effective systems and technology solutions. The Petitioner will offer intelligent and innovative software development solutions aiming at supporting many businesses by optimizing processes, reducing costs, increasing productivity, enhancing business intelligence, and helping companies operate more efficiently. Particularly, through his company, he will provide tracking technologies to companies operating mainly in the logistic and transportation industries. Specifically, the company will offer the following tracking solutions, including OBD tracking, wearable tracking devices, and vehicle tracking cards.

The Petitioner also submitted the business plan for his company . 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 education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner’s business plan anticipates that his company would employ 15 personnel in year one, 28 in year two, 48 in year three, 70 in year four, and 101 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 revenue projections of \$1,079,347 in year one, \$2,014,781 in year two, \$3,468,302 in year three, \$5,022,561 in year four, and \$7,281,994 in year five, he did not adequately explain how these sales forecasts were calculated.

The record includes information about the occupational outlook for computer and information systems managers, careers in the field of information technology services, trends in the information technology sector, market research and competitive analysis, the value of small businesses to local economies, the benefits of small businesses to the U.S. economy, the economic effects of the coronavirus pandemic, the value of information technology in business, and the Trump administration’s science and technology innovation initiatives. In addition, the Petitioner provided articles discussing the value of information technology infrastructure, the changing role of information technology in the future of business, the contribution of information technology to business success, the essential role of logistics in business strategy, ways small businesses use technology to level the playing field, the value of

logistics during the COVID-19 pandemic, and the way logistics plays a crucial role in the global economy. He also submitted information about the software and information technology industry, factors that contribute to U.S. economic growth, governmental policies' effect on economic growth, the benefits of logistics to business growth, the value of logistics in the modern world, the U.S. software engineer shortage, solutions for addressing the information technology skills shortage, recommendations for addressing the U.S. software developer shortage, and foreign-born STEM workers in the United States. With the appeal, the Petitioner presents articles about the ways GPS benefits the transportation industry, the value of the trucking industry, trucking economics, the benefits of U.S. trucking business, the effect of freight transportation on the U.S. economy, challenges faced by big-rig drivers, the impact of U.S. inflation and driver shortages on the trucking industry, and the GPS Innovation Alliance. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

Furthermore, the Petitioner initially provided letters of support from I-C-C-, I-R-B-, C-A-D-, E-D-S-, G-F-B-, and V-S- discussing his information technology capabilities and business experience. The Petitioner's skills, knowledge, and prior work in his field, however, 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 Petitioner also submitted an "Expert Opinion Letter" from B-W-, a professor of computer science and cyber security at G-F-U-, in support of his national interest waiver. B-W- contends that the Petitioner's proposed work is of national importance because his generic occupation of information technology consultant and the industry in which he works stand to contribute to our nation's economic growth and security. The issue here, however, is not the national 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." *Id.* at 889. The letter from B-W- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work operating a software development and tracking technologies consulting company offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

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 "have broader implications for the field or industry, beyond the clients he would serve." The Director also indicated the Petitioner had not shown that his proposed work will offer "substantial positive economic effects."

In his appeal brief, the Petitioner contends that his "proposed endeavor will have substantial economic impact and generate significant employment." He asserts that his undertaking stands to "help businesses grow and expand" and therefore "will positively impact the U.S. economy." The Petitioner further states that his proposed work "will focus on businesses operating in the transportation and logistics sectors, providing them with tracking technology solutions aimed at improving operational costs." In addition, he claims that his undertaking "will offer innovations and broad implications to the U.S. business and technology arena, particularly through the development and implementation of new specialized IT solutions and systems." Furthermore, the Petitioner argues that his proposed work "will increase tax

revenues for federal and state governments,” “create a substantial number of indirect job opportunities,” and “provide substantial economic benefits in Florida and the United States.”

The Petitioner also asserts that his undertaking stands to “help alleviate the driver shortage in the trucking industry,” but he does not explain how the services offered by his company will address this shortage. Further, while the Petitioner’s RFE response included articles discussing the U.S. software engineer shortage, solutions for addressing the information technology skills shortage, and recommendations for addressing the U.S. software developer shortage, we are not persuaded by the claim that his proposed endeavor has national importance due to the shortage of professionals in the information technology and trucking industries. Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce these claimed national shortages. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

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 business consulting and tracking technology services for his company’s 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 company and its clientele to impact the transportation industry, the information technology consulting field, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown 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 demonstrated that his company’s future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating 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 endeavor will “generate significant employment” and “create a substantial number of indirect job opportunities,” he has not offered sufficient evidence that his endeavor offers

Florida or the United States a substantial economic benefit through employment levels, tax revenue, or business activity.<sup>2</sup>

For the aforementioned reasons, 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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. 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"); 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).

### 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.

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<sup>2</sup> As previously indicated, the Petitioner did not elaborate on his business plan's staffing projections or provide sufficient evidence supporting the need for the additional employees. Nor did he provide sufficient documentation in support of his indirect jobs claim. In addition, he did not adequately explain how his business plan's sales revenue forecasts were calculated.