



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

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

In Re: 28111963

Date: AUG. 31, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business and financial consultant, seeks classification as a member of the professions holding an advanced degree. *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, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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. 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

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).

- 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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 Petitioner intends to work in the United States as a business and financial consultant. In a personal statement submitted in support of the petition, the Petitioner described his proposed endeavor as follows:

Regarding my future professional plans in the United States, through my company [REDACTED] I will concentrate on providing financial and business consulting to local and international individuals desiring to open companies or invest in companies within [U.S.] soil. I will provide a personalized service in which investors will receive the professional guidance in order to comply with U.S. federal and state government agencies and its relative tax laws, allowing them to successfully invest money which will generate job opportunities and consequently revenue potential for State agencies and Federal agencies once these companies enter the path of earning income in the U.S. Furthermore, my company will highlight the business opportunities within the U.S. for international investors and attract convenient international trades and partnerships that will only boost the U.S. economy especially at a time where we are in critical need of financial help after our economy has been negatively impacted by COVID-19. I continue to believe that even during and post this pandemic, the U.S. still has the most opportunities in the world for small businesses and outside investors who all want to come and invest and live in the U.S. The U.S. is a worldwide leader in economics and I believe I can use my expertise in finance, tax, and business to help companies maneuver through this financial market and find the best solutions to stimulate and grow this economy.

My experience and my background in business, financial accounting and tax consulting renders me an ideal consultant to enhance international investment, national investment by helping small businesses and consequently job creation and economy stimulation. According to selectusa.gov "Foreign Direct Investment (FDI) plays an essential role in ensuring U.S. economic growth and prosperity, creating highly compensated jobs, spurring innovation, and driving exports." My main targets are to attract investors from

Latin America and assist US small businesses who are just starting out in need strategies and advice on how to navigate tax implications and financial decisions of the business.

. . .

I will also aim to revive trade with Latin America's emerging markets and start durable trade partnership with this geographically well positioned region that is South Florida. I believe this will help improve economic relations and in consequence implement a plan to reborn [*sic*] from this coronavirus recession that we are experiencing. I believe with my help, we can help [this] hurting economy rise once again after this horrible pandemic. My work can help generate business for hundreds of companies, which will stimulate the economy by creating jobs and revenue, boosting the U.S. economy overall.

The Petitioner also submitted copies of industry articles and reports as well as letters of recommendation in support of his eligibility.

The Director determined that the Petitioner's initial filing did not identify his proposed endeavor with sufficient detail, and issued a request for additional evidence (RFE) demonstrating the proposed endeavor's substantial merit and national importance. Specifically, the Director acknowledged the Petitioner's submission of a 2018 IBISWorld Report which discussed the importance of financial management and the impact of finance on business growth, but noted that this report did not relate specifically to the Petitioner's proposed endeavor.

In response, the Petitioner submitted an updated personal statement, where he again emphasized that he would "consult businesses looking to enter the U.S. market or that are already in the U.S. and seek to develop and grow successfully" through his company, [REDACTED] He further stated that he intended to "assist U.S. small and medium size enterprises (SMEs) that need guidance and strategic advice on navigating this challenging market, especially regarding tax implications and financial decisions." The Petitioner also submitted his company's business plan, opinion letters, a client letter, and additional industry articles and reports.

In denying the petition, the Director concluded that although the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate that the Petitioner's work would impact the regional or national population at a level consistent with national importance. The Director determined that the Petitioner did not demonstrate that the benefits of his proposed U.S. employment would reach beyond his clients to affect his field or the United States more broadly, and further noted that the record was insufficient to establish that his work "will serve as an impetus for progress in the business sector."

On appeal, the Petitioner claims that the Director's decision was erroneous, noting that his endeavor "has the potential to create a ripple effect in the industry and beyond." The Petitioner further contends that the Director erred by applying a "stricter standard of proof" when evaluating the national importance element of *Dhanasar*'s first prong and not analyzing the "totality of the evidence," including his personal statement, business plan, probative research, and expert opinions.

With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what he claims is “more likely than not” or “probably” true. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989). Here, the Director thoroughly analyzed the Petitioner’s documentation and weighed his evidence to evaluate whether he had demonstrated, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework.

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. Generally, we look to evidence documenting the “potential prospective impact” of a petitioner’s work. The Petitioner submitted articles and reports addressing importance of financial planning and business consulting and its impact on the U.S. economy. We recognize the value of the financial planning and business consulting; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

Similarly, the Petitioner’s personal statement emphasizes the value of financial management and consulting and the impact of finance on business growth instead of focusing on the prospective impact of his specific endeavor. The Petitioner discusses the benefits of financial planning and consulting at length, highlighting how his endeavor will help improve economic relations, generate business for hundreds of companies, and stimulate the economy by creating jobs and revenue. However, the Petitioner does not point to any corroborating evidence that would directly link his specific endeavor to the overall economy’s growth. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

In addition, the Petitioner asserts that the expert opinion letters from an associate professor at [redacted] University and a professor of practice at [redacted] University provide independent and objective evidence demonstrating the national importance of his endeavor. The bulk of the opinion letters discuss the importance of financial planning and consulting services and the impact of finance on business growth, and generally make the same assertions set forth by the Petitioner in his personal statement. The letters also point to the Petitioner’s intent to assist Hispanic companies and note that a key goal of the Petitioner’s company is to “attract investors from Latin America and provide them with strategic tools to enter and succeed in the U.S. market and assist U.S. small and medium-sized enterprises (SMEs) that need guidance and strategic advice. . . .” However, the letters do not explain how the Petitioner’s financial and business consulting services have broader implications for our country. Although the writers recite the Petitioner’s career history and experience and opine that he is well positioned to advance his proposed endeavor, they do not articulate how the Petitioner’s specific proposed endeavor of providing financial and business consulting services to individual companies will have significant potential to employ U.S. workers or substantial positive economic effects in an economically depressed area. The letters, therefore, do not establish the national importance of the Petitioner’s specific proposed U.S. work. *See Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988) (holding that the immigration service may reject or afford less

evidentiary weight to an expert opinion that conflicts with other information or “is in any way questionable”).

The Petitioner also provided recommendation letters from clients and colleagues who attested to the quality of his work and the potential impact of his proposed endeavor. Although the letters praise him for his work, the Petitioner’s skills, expertise, and abilities relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor he proposes to undertake has national importance under *Dhanasar*’s first prong. In addition, the letters discuss the impact of the Petitioner’s work to their own experiences rather than the required broad impact to the business and finance sector. *See id.* at 889.

In addition, we noted in *Dhanasar* that “we look for broader implications” of the proposed endeavor and 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. The Petitioner’s business plan attempts to show his endeavor’s potential positive economic effects by recounting the value and importance of financial and business consulting and its impact on business growth. For example, the plan stipulates that approximately “24% of small businesses in the United States planned to hire a financial consultant or advisor in 2021,” thereby indicating the necessity of the Petitioner’s consulting services. It further discusses the potential growth of the management consulting industry, noting that it “is poised to benefit from overall economic growth” over the next five years. However, *Dhanasar* requires us to focus on the “the specific endeavor that the foreign national proposes to undertake,” not the importance of the field, industry, or profession in which the individual will work. *Id.* at 889.

Further, the Petitioner did not demonstrate how his business plan’s claimed revenue and employment projections have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the sales forecast projects total sales of \$367,000 in year one and \$793,200 by year five, the business plan does not establish the benefits to the regional or national economy would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Similarly, although the plan claims the business would create seven jobs by its fifth year of operations, the Petitioner did not demonstrate that such future staffing levels would provide substantial economic benefits to Florida or the region or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not show that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally.

Moreover, the job creation and revenue projections included in the Petitioner’s business plan are not supported by details showing their basis or an explanation of how those projections will be realized. Even if the Petitioner had established a sufficient basis for those projections, they would not establish the national importance of the proposed endeavor. While the projections in the business plan indicate that the Petitioner’s company has growth potential, the plan 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*. *See id.*

In addition, the Petitioner has not offered sufficient evidence that the area where his company will operate is economically depressed; that his company would employ a significant population of workers in those areas; or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. Without this evidence, we cannot evaluate the proposed endeavor's impact on job creation or its overall economic impact. As such, the Petitioner has not supported a claim that his proposed endeavor stands to sufficiently extend beyond his customers to impact the financial and business consulting field at a level commensurate with national importance.

Finally, we note the Petitioner's submission of two of our non-precedent decisions on appeal, in which each petitioner submitted a Form I-140 petition seeking classification as an individual of extraordinary ability and we sustained the appeals. First, as noted, these two petitioners sought employment-based first preference (EB-1) immigrant classification, which is different from the EB-2 immigrant classification sought by the Petitioner in the instant case. Second, neither decision was published as a precedent and, therefore, these decisions do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

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 satisfies the second or third *Dhanasar* prong. *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 demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.