



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

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

In Re: 24516282

Date: MAY 01, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a project manager specializing in sustainable construction, 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. 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 record did not establish that the Petitioner's endeavor has national importance or that it would be beneficial to the United States to waive the job offer requirement. 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. Section 203(b)(2) of the Act.

Neither the statute nor the pertinent regulations define the term "national interest." *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that: (1) 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 benefit the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Director found that the Petitioner qualifies as an advanced degree professional and meets the second prong of the *Dhanasar* test, but not the first or third. On appeal, the Petitioner provides a resume, letters of support, a copy of the business plan for his planned endeavor (a solar panel installation company), and a cover letter explaining why this endeavor has national importance.

On his Form I-140, Immigrant Petition for Alien Workers, the Petitioner stated that his occupation and job title would be “[p]roject manager of sustainable building projects” and his proposed endeavor in the United States would be: “Research, design, plan, or perform engineering duties in the prevention, control, and remediation of environmental hazards using various engineering disciplines. Work may include waste treatment, site remediation, or pollution control technology,” which is the U.S. Bureau of Labor Statistics (BLS) description of the duties of an environmental engineer.¹ He also selected the Standard Occupational Code (SOC) 17-2081 for environmental engineers to describe his proposed employment. The initial filing included a letter from [REDACTED] a Massachusetts property developer, indicating its intention to hire the Petitioner’s company for consulting services in the field of sustainable construction for an unspecified period. Finally, the Petitioner provided general materials regarding sustainable construction, climate change, the BLS Occupational Outlook Handbook’s listing for architects,² and a report on higher education in technical fields.

The Director issued a request for evidence (RFE) requesting, among other things, further evidence of how the proposed endeavor would be of national importance. In response, the Petitioner provided a copy of his resume, a business plan for a solar panel installation business in Florida, letters of support, and corporate registration documents and licenses related to his general contracting company in Russia. The Director found that while the Petitioner’s endeavor had substantial merit, the record didn’t establish it was of national importance.

On appeal, the Petitioner reiterates his prior arguments about the importance of renewable energy to the U.S. economy and environment, as well as growth in sustainable energy markets, stating that his endeavor would reduce U.S. dependence on foreign energy sources as well as the pollution caused by the use of fossil fuels. As acknowledged by the Director, sustainable energy and sustainable construction are activities which have substantial merit. However, this does not mean that all endeavors in these areas are of national importance.

When determining whether a proposed endeavor would have national importance, the relevant question is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 889-890. For example, an endeavor may qualify if it has national implications within a particular field, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.*; see generally 6 USCIS Policy Manual F.5(D)(1), <http://www.uscis.gov/policy-manual>. In

¹ U.S. Bureau of Lab. Stat., *Environmental Engineers*, <https://www.bls.gov/oes/current/oes172081.htm>.

² There is no indication in the record that the Petitioner is trained or licensed as an architect.

the present case, the Petitioner has not established how his endeavor's impact would extend beyond his business's clients.

First, the record does not provide a consistent account of the planned endeavor. In his initial evidence, the Petitioner provided a letter from [] describing the endeavor as a consulting company that will “research the latest trends and technologies in the emerging fields of Green Construction such as solar panels, Geothermal HVAC systems, biodegradable materials, green insulation, use and integration of IoT and Smart Appliances, low-energy and zero-energy buildings, sustainable sourcing and such.” This letter stated that the company would be hired for services such as this research into sustainable construction technology, assisting architects with integration of such technology into building design, inspecting project sites for compliance with design and safety standards, and providing technical advice to general contractors in connection with [] property development projects in Massachusetts. The Form I-140, by contrast, stated that the Petitioner would be a sustainable construction project manager and that he would perform the duties of an environmental engineer, which center on preventing and remediating environmental hazards. The Form ETA 750, Application for Alien Employment Certification, submitted with the petition stated that the Petitioner's advanced degree is in civil engineering and that the proposed occupation would be a sustainable engineering consultancy. Finally, the Petitioner submitted a description of the job duties of architects. The Petitioner mentioned several possible occupations with different SOC codes when describing his proposed work in the United States.³ Where there are discrepancies in the record, the Petitioner must resolve these discrepancies using independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

In response to the Director's RFE, the Petitioner submitted a cover letter and business plan stating that his company will provide solar panel installation and maintenance services in Florida. This new description of the endeavor differed from the descriptions in the initial filing. The initial proposed endeavor was either in environmental engineering, architecture, or an engineering consulting business in the field of sustainable construction with projects in Massachusetts. However, in the RFE response, the Petitioner shifted his focus to solar panel installation, maintenance, and repair services in Florida. This did not resolve the initial discrepancies in the Petitioner's description of his endeavor. *Id.* The inconsistent accounts of the Petitioner's endeavor do not suffice to meet *Dhanasar*'s requirement that petitioners identify “the specific endeavor the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889; *see generally* 6 *USCIS Policy Manual*, *supra* at F.5(D)(1) (“For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work . . .”).

On appeal, the Petitioner provides letters stating that his company will perform various activities other than solar panel installation. The letter from [] provided on appeal repeats the claim that the endeavor is an engineering consulting company. The letter from [] states that the Petitioner's company provides solutions such as wall and ceiling insulation, energy efficient windows, water recycling systems, and vertical gardens.⁴ These activities are not accounted for in the

³ U.S. Bureau of Lab. Stat., *May 2021 Occupation Profiles*, https://www.bls.gov/oes/current/oes_stru.htm (indicating the following SOC codes: Civil Engineers: 17-2051; Architects, Except Landscape and Naval: 17-1011; Environmental Engineers: 17-2081; and Construction Managers: 11-9021).

⁴ This letter also states that the Petitioner's company has a “substantial and rapidly growing client base in the US.” While

Petitioner's business plan or otherwise explained in the record. Finally, a letter from J-B-, a research and development manager for an unidentified solar panel manufacturer, states that the Petitioner has been offered the opportunity to work with J-B-'s company but does not specify what company this refers to or what work the Petitioner would perform. The appeal does not contain sufficient independent, objective evidence to resolve the discrepancies regarding the nature of the Petitioner's proposed endeavor. *Matter of Ho*, 19 I&N Dec. at 591-592. While the endeavor may include some or all of the activities outlined above, we conclude that the Petitioner has not provided a specific or consistent proposed endeavor activity such that we can determine its national importance. See *Dhanasar*, 26 I&N Dec. at 889.

Second, the documentation provided does not establish how the Petitioner's initial proposed endeavor of engineering consulting in sustainable construction would have sufficient impact to reach the level of national importance. *Dhanasar* states that an endeavor may have national importance if it has national or global implications within a particular field, but the record does not establish that the Petitioner's work would impact his field in such a manner. *Id.* For example, the letter from [] states that the Petitioner "is making significant contributions to energy recapture and recycling," but does not specify what contributions it refers to. A letter from [] states that the Petitioner's endeavor is "revolutionary" and that he "will continue to develop unique green construction methods," but there is no supporting documentation in the record establishing how the Petitioner's methods could have national or international implications in his field. Finally, J-B- states that he has worked with the Petitioner and considers him "one of the best in the business," but provides no examples of the work they have done together except for phone and video chats, and does not specify what work he would hire the Petitioner to do. These letters are insufficient to establish what impact the Petitioner's endeavor would have on his field or how it would be nationally important. *Id.*

Dhanasar states 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," may have national importance. *Id.* at 890. Such effects need not be national in scale but must demonstrate a potential prospective impact that is "substantial" to a particular area, region, or industry. *Id.* However, the record does not establish how the Petitioner's endeavor, specifically, would have such benefits. The support letters rely heavily on general information about the importance and economic impact of sustainable construction as a field. As noted above, the fact that an endeavor has substantial merit does not establish that it will have national importance. Similarly, while the business plan asserts that the Petitioner's company will create jobs, reduce dependence on foreign sources of energy, reduce pollution, and create economic benefits by allowing homeowners and businesses to spend less money on electricity, it does not establish to what degree its operations will have these impacts. The Petitioner's business plan states that after five years, the company will employ six workers in Florida other than the Petitioner at a median wage level of \$60,000 and have over \$10 million in revenues. However, the Petitioner does not provide documentation establishing that the area where his company will operate is economically depressed, that he will employ a significant population of workers in that area, or that the endeavor would offer the region or its population a substantial economic benefit. It is also not apparent that the company's projects would represent a significant share of the Florida or

the record indicates that the company was incorporated in 2016, there is no documentation showing that it has already started providing goods or services. Because the letter from Sistema is not in accord with the rest of the record, we will not grant it decisive weight. See *Matter of Caron*, 19 I&N Dec. 791, 795 (BIA 1988).

U.S. solar panel installation market. This does not establish that the proposed endeavor's economic impact would rise to the level of national importance.⁵

Finally, the letters' assertions about the Petitioner's education and professional record go towards the second prong of the *Dhanasar* test, which concerns the Petitioner's ability to advance the proposed endeavor. They do not establish that his endeavor, and of itself, has significant potential to contribute to the advancement of the fields of renewable energy or sustainable construction or to otherwise enhance societal welfare. *See generally* 6 *USCIS Policy Manual*, *supra* at F.5(D)(1). The Petitioner has not demonstrated that his proposed endeavor has national importance.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the second and third prongs and we hereby reserve them. *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 petition will remain denied.

III. CONCLUSION

The petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. As such, we conclude that he 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.

⁵ The letter from [] and the other documentation of the Petitioner's initial engineering consultancy endeavor do not contain specific information about that endeavor's economic benefits, such as projected employment and revenues. This does not establish what economic impact that endeavor would have in Massachusetts, and so does not establish eligibility.