



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

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

In Re: 26578599

Date: MAY 3, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and business developer, 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. 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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

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

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 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 work in the United States “as an entrepreneur and business developer.” He explained that he plans to “create and/or lead businesses and their managerial aspects, creating and implementing solutions and procedures to ensure the most profitable and cost-effective operations, while meeting the needs of U.S. communities or companies.” The Petitioner further stated that his “work for U.S. companies, providing business development services and advice, can help U.S. companies form key partnerships with companies in Latin America – with which I have easy access – so that they can overcome any barriers, and establish a profitable operation in Latin America.” He listed three ongoing business projects in the United States: his partnership in a company that leases premium and luxury motor homes, his intention to open a motorhome and boat storage company that also offers cleaning services, and his plan to open a company that serves as an authorized reseller and maintenance provider of Motorino motorbikes and electric scooters.

In addition, the Petitioner provided documentation relating to his formation of [REDACTED] including its “Florida Profit Corporation” registration and Internal Revenue Service Employer Identification Number. He also submitted a “Share Purchase Agreement” between [REDACTED] (“Seller”) and [REDACTED] (“Purchaser”). This Agreement stated: “The Seller agrees to sell and the Purchaser agrees to purchase all the rights, title, interest, and property of the Seller in the Share for an aggregate purchase price of \$11,350.00. A fixed sum of \$85,125.00 will be payable on closing of this Agreement.”

In response to the Director’s request for evidence (RFE), the Petitioner indicated that his proposed endeavor is aimed at his three ongoing business projects. With respect to his luxury motor home leasing company partnership, the Petitioner stated that he is “providing consulting services and preparing the company to leverage exponential growth in this business segment for the next few years. We are currently studying the opening of new branches, and analyzing smaller companies to be acquired, to achieve faster and more consistent growth.” The Petitioner also claimed that this company will “be responsible for adding U.S. jobs to the country. Currently, the company has 3 people working directly, and several others providing outsourced services.”² We project that during the busy season (end of year), we will need to hire additional employees to meet demand.” He further asserted that “[e]ach branch should have around 6 to 10 jobs, and another 5 to 8 indirect jobs.” The Petitioner, however, did not elaborate on these staffing

² The record does not include company financial statements or federal tax returns to corroborate his partnership and business growth claims.

projections or provide evidence supporting the need for these additional employees. Nor did not adequately explain how these staffing forecasts were calculated.

Regarding his motorhome and boat storage company, the Petitioner stated that he is “currently focusing my work on the market study process, where I am preparing strategic plans, and the financial structure for the opening of the business. . . . Once we choose the land from the options identified, I can finalize the strategic planning part of the endeavor.”³ He further asserted that this project will also “increase employment opportunities for U.S. workers. Each storage in operation will have to have a business manager, a sales and customer service support, and also 5 to 10 people who will take care of the maintenance, washing and cleaning of the stored motor homes and boats.” The Petitioner, however, did not elaborate on these staffing projections, offer evidence supporting the need for these additional employees, or adequately explain how these staffing forecasts were calculated.

With regard to his Motorino motorbike and electric scooter company, the Petitioner asserted: “In this project, which is in the planning stage, I intend to open a company to serve as the authorized reseller and maintenance provider of the Italian brand, Motorino, which already operates in the Brazilian market.” He further stated that he is “conducting a market study, drafting a business plan, financial planning, market planning, and company implementation. The only part that will be outsourced will be the import and approval part of the products in the United States.”⁴ In addition, the Petitioner indicated that this project “would generate 8 to 12 jobs for U.S. workers. . . . The plan is to open 6 franchises in 2024, which would generate between 24-36 jobs for U.S. workers. In 2025, we plan to open 12 more franchises, which will generate an additional 48 to 72 jobs for U.S. workers. Again, the Petitioner did not elaborate on these staffing projections, provide evidence supporting the need for these additional employees, or adequately explain how these staffing forecasts were calculated.

The record includes information about foreign direct investment in the United States, the benefits of expansion into foreign markets, the value of international trade and investment, the ways global investment boosts the U.S. economy, international growth at mid-cap companies, Latin America’s promise as a business destination, the decrease in Chinese investment in the United States, the ways the effects of shocks to local labor demand on local labor market outcomes vary with initial local economic conditions, and the value of entrepreneurship to the U.S. economy. In addition, the Petitioner provided articles discussing small business growth through international trade, developing a business growth strategy, the benefits of foreign direct investment, international trade as a growth opportunity for U.S. retailers, business trends resulting from the COVID-19 pandemic, the decrease in foreign direct investment in the United States in 2017, the value of strategic foresight capabilities in global investment, the benefit of small businesses to local economies, and small businesses as the foundation for economies worldwide. He also submitted information about expanding a small business abroad, the International Trade Administration, the benefits of international trade, activities of affiliates of foreign multinational enterprises, the advantages of establishing a local business entity in Latin America, the hidden costs of global expansion, the benefits of entrepreneurship in economic development, small business owners’ effect on the local economy, the ways small businesses drive the U.S. economy, the value and role of an entrepreneur, and employment generation as an economic

³ The record does not include evidence to corroborate the Petitioner’s claims.

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recovery program. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

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 impact the industry or field more broadly." The Director also indicated that the Petitioner had not shown his proposed work has broader implications in the field, significant potential to employ U.S. workers, or other substantial positive economic effects.

On appeal, the Petitioner contends that his proposed endeavor will contribute to U.S. gross domestic product and increase the number of American jobs. He asserts that his undertaking involves creating "jobs for U.S. workers" and therefore it "will produce substantial positive economic effects for the United States." The Petitioner further states that his "endeavor, which will require the employment of U.S. workers, will provide these benefits throughout the country. This is because the hiring of any number of U.S. workers produces these economic benefits." He also argues that "as an owner of multiple small businesses in the country, [the Petitioner] will be responsible for significant economic benefits that are produced by small business owners."

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 develop and operate three businesses, 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 companies' business operations to impact his field or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated 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 shown 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 three projects have growth potential, he has not presented evidence demonstrating that the benefits to the regional or national economy resulting from his undertakings would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his endeavor stands to "increase the number of American

jobs,” he has not offered sufficient evidence that the areas where his companies will operate are economically depressed, that he would employ a significant population of workers in those areas, or that his endeavor would offer any particular U.S. region or its population a substantial economic benefit through employment levels or business activity.

Additionally, the Petitioner asserts that his proposed endeavor “will broadly enhance cultural or artistic enrichment” through his operation of a motorhome business that “will promote tourism within the United States.” He states: “Traveling to different areas will provide a sense of discovery, intercultural understanding, and enriching experiences. Americans will gain a better understanding of the country, familiarize themselves with cultural diversity, traditions, customs, and learn about different lifestyles, etc.” The Petitioner, however, has not demonstrated that his operation of a motor home leasing company stands to sufficiently extend beyond his company’s customers to enhance societal welfare more broadly at a level indicative of national importance.

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 third prong 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.