



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

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

In Re: 26246905

Date: MAY 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business administrator, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) 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. *See 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 Director of the Texas Service Center denied the petition, concluding that the record did not establish 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.

Whilst 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 USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) 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 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

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 of a labor certification, would be in the national interest.

The Director denied the petition, concluding that whilst the Petitioner was well positioned to advance their proposed endeavor, the proposed endeavor was not of national importance such that on balance a waiver of the requirement of a job offer and labor certification would be beneficial to the United States. We agree with the Director's overall decision that the Petitioner does not qualify for a national interest waiver, but we do not agree with and will withdraw the Director's specific finding that the Petitioner was well positioned to advance their proposed endeavor.

A. Substantial Merit and National Importance

Whilst the Director found that the Petitioner's proposed endeavor had substantial merit, they also concluded that the Petitioner did not demonstrate that their proposed endeavor was of national importance because the Petitioner did not demonstrate the broader implications of the proposed endeavor or its potential positive economic effects. For the below reasons, we agree.

In determining national importance under *Dhanasar*, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "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 a 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. So what is critical in determining the national importance under *Dhanasar* is whether the proposed endeavor has a potential prospective impact with broader implications which rise to the level of national importance. So it is not what duties or what occupation the noncitizen will fill or perform but their actual plan with their occupation and duties that is examined.

As stated above, the Petitioner's proposed endeavor is to continue their career as a business administrator, working with U.S. companies on their business development and expansion. The Petitioner roots their eligibility under this first prong of the *Dhanasar* framework citing their previous professional experiences, awards and recognitions as described in their curriculum vitae, and updated "Professional Plan." The Petitioner submitted several employment verification letters from previous employers describing the work that the Petitioner accomplished while in their employ to support the potential prospective impact of their work in the proposed endeavor. They also submitted numerous certificates from a variety of places, such as LinkedIn and FGVOnline, purporting to support their skills in sub-disciplines of business administration. And they provided an expert advisory opinion from [redacted] assistant professor, [redacted] University in [redacted] Louisiana.

On appeal, the Petitioner states that the national importance of their proposed endeavor described in the updated "Professional Plan" stems from their execution of their self-developed "Triad of Value"¹ in connection with the work they intend to do with U.S. companies. The Petitioner contends that national importance is broadly implicated by the potential value that U.S. companies will realize when they avail themselves of the Petitioner's work.

Although the evidentiary standard in immigration proceedings is the lowest preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden

¹ Elsewhere in the updated "Professional Plan" the Petitioner refers to their "unique working approach" as a "Triad of Valor." Although at first impression this could be explained as a typographical error, its repeated appearance in the updated "Professional Plan" does raise reasonable questions about whether it is in fact the "unique working approach" the Petitioner describes or a branding exercise in response to the RFE.

of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

The infirmity of the Petitioner's proposed endeavor becomes readily apparent upon an examination of the evidence and argument the Petitioner introduced into the record. The Petitioner's evidence and argument does not help them carry their burden of production and persuasion because it does not relate to the national importance of the Petitioner's proposed endeavor under the first prong of the *Dhanasar* framework.

The Petitioner's appeal stresses that it is their execution of their proposed endeavor which elevates it to a level of national importance. But the Petitioner's argument spotlights a fundamental misunderstanding of the first prong of the *Dhanasar* framework. The first prong of the *Dhanasar* framework focuses on the proposed endeavor; not on the Petitioner's execution of that proposed endeavor. The *Dhanasar* framework is consequently unconcerned with the likelihood of the success of the proposed endeavor. The Petitioner's contentions about their successful past performance in the endeavor they propose, as well as evidence and information of their achievements and recognition would better serve a demonstration of eligibility under the second prong of the *Dhanasar* framework.

The Petitioner's employment verification letters did not reflect how national importance was implicated by the Petitioner's proposed endeavor because the letters focused on the Petitioner's past work. When evaluating the national importance of a proposed endeavor under the first prong of *Dhanasar*, we are concerned with its potential prospective or future impact. The Petitioner's demonstration of prior similar work does not have an influence on the proposed endeavor's potential prospective impact based on its national importance.

Moreover, the certificates in various discrete business-related subjects like negotiation, body language, leadership, diversity, etc. from distance or online learning seminars from LinkedIn or FGVOnline, do not illuminate the national importance of the Petitioner's endeavor. The certificates earned by the Petitioner relate to them as an individual and their own personal development of their core skills. The national importance of the Petitioner's proposed endeavor stands separate and apart from the Petitioner's skills.²

The updated "Professional Plan" is also insufficient to demonstrate the national importance of the potential prospective impact of the proposed endeavor. The updated "Professional Plan" described the Petitioner's proposed endeavor as a plan to "deploy my unique working approach to business development and expansion on American soil." The Petitioner coined this approach the "Triad of Value" designed to "establish profitable partnerships through the interchange of services and products between agents quickly and with a high impact on the community." But the Petitioner's meandering explanation appears to be technical jargon without any cognizable substance with which the national importance of the "Triad of Value" can be evaluated. The Petitioner has not provided any material, probative, or relevant evidence of national importance stemming from the broader implications of the

² The Petitioner's education, skills, and knowledge are a relevant point for evaluation under *Dhanasar*'s second prong.

Petitioner's "non-linear" implementation of its "Triad of Value," or any positive economic effects separate and apart from the benefits that could be realized by the clients that may engage the Petitioner's services.

The advisory opinion submitted by the Petitioner does not illustrate how the Petitioner's proposed endeavor implicates a concern of national importance, either. The writer focused their analysis of the Petitioner's past performance of business administration duties with previous employers. The writer also states that the Petitioner's work will support the national interest by supporting small businesses. The writer also mentions that national interest in improving public health will be realized because the Petitioner initially intends to focus providing their services to oral health care businesses. But the impact of the Petitioner's services on the small businesses and public health on a larger basis than just the subset of those groups taking advantage of the Petitioner's services does not rise to a level of national importance. The writer did not explain the Petitioner's proposed endeavor's potential prospective impact by identifying its broader implications or any positive economic effects that it could be credited with.

And whilst the advisory opinion cites to publicly available information from the U.S. Department of Labor and the White House to attempt to establish the overall importance of improving economic scenarios for small businesses and benefitting public health initiatives, they have not demonstrated how the administration of day-to-day business in these fields as contemplated by the Petitioner's proposed endeavor rises to a level of national importance.

So we conclude that the Petitioner has not established that their proposed endeavor is of national importance.

B. Well Positioned to Advance the Proposed Endeavor

And we must withdraw the Director's conclusion that the record established that the petitioner was well positioned to advance the proposed endeavor under the second prong of the *Dhanasar* framework. In evaluating whether a petitioner is well positioned to advance their proposed endeavor, we review the following and any other relevant factors:

- A petitioner's education, skill, knowledge, and record of success in related or similar efforts;
- A petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing;
- Any progress towards achieving the proposed endeavor; and
- The interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

As stated above, a petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Y-B-*, 21 I&N Dec. at 1142 n.3. The record contains evidence of the Petitioner's education and extra-curricular efforts to obtain online certifications in various discrete business-related subjects like negotiation, body language, leadership, diversity, etc. from distance or online learning seminars from LinkedIn or FGVOnline. But simply having education, skills, and/or knowledge in isolation do not place a petitioner in a position to advance their proposed endeavor. This is only one factor amongst many factors which are evaluated together to determine

how well positioned a petitioner is to advance a proposed endeavor. It is not clear from the totality of the evidence in the record how an individualized consideration of the multifactorial analysis under *Dhanasar*'s second prong would demonstrate how well positioned the Petitioner is to advance their proposed endeavor. For example, the record does not reflect how the Petitioner's prior performance of the duties described in the experience letters is either a similar effort as that of their proposed endeavor or how it constitutes a record of success. And the Petitioner's updated "Professional Plan" identified a target audience for their proposed endeavor, but it did not demonstrate how they planned to engage with the target audience or anything else which constituted the development of a model for future activities that the Petitioner has developed or played a significant role in developing to advance their proposed endeavor. The updated "Professional Plan" instead only placed heavy emphasis on what the Petitioner had done in their past and their qualifications to continue the same activities in the future. The record simply does not reflect any progress to achieving the proposed endeavor. And the recommendation letters the Petitioner submitted are not material, relevant, or probative evidence in the record of interest or support in the endeavor the Petitioner proposed in their petition. So the Petitioner has not demonstrated with material, relevant, and probative evidence that they are well-positioned to advance their proposed endeavor.

C. Whether on Balance a Waiver is Beneficial

The third prong requires a petitioner to demonstrate 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. On appeal, the Petitioner asserts that the national interest in their proposed endeavor is sufficiently urgent to warrant a waiver, and that the United States would benefit from their contributions to the field of endeavor. As the Petitioner has not established that they meet the first or second prong of the *Dhanasar* framework, they have not shown that they are eligible for and otherwise merit a national interest waiver, and we reserve this issue. *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 prongs of the *Dhanasar* analytical framework, we find that they have not established that they are eligible for or otherwise merit a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.