



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

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

In Re: 26930207

Date: MAY 23, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a construction manager, 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 the record did not establish that the Petitioner qualifies for the national interest waiver. 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 qualify for a national interest waiver, a petitioner must first show eligibility 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 EB-2 eligibility, 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 USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

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 question before us 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. In the denial notice, the Director did not address the issue of the Petitioner's eligibility for the underlying EB-2 classification or the substantial merit of the proposed endeavor. We will not address those issues here, because the issues that the Director did raise are sufficient to determine the outcome of the appeal.

The Petitioner earned a bachelor's degree in engineering in 2011, and the title of "Business Administration Specialist for Engineers," equivalent to "one year of graduate-level study," in 2013. The Petitioner has worked for various communications companies and contractors in Brazil since 2008, first as a construction project coordinator, then as a project manager and senior project analyst. The Petitioner entered the United States in March 2019 as a B-2 nonimmigrant visitor. In December 2019, he established a construction project management company in Florida. He filed the present petition in August 2021.

The Petitioner stated that his project management company is "[d]edicated to improving the U.S. mobile and other telecommunications infrastructure systems through effective consultation plans related to the construction and maintenance of urban structures." Beyond this general description of his occupation, however, the details of the proposed endeavor are inconsistent. Initially, the Petitioner stated:

I want to improve the construction industry and infrastructure system to improve US citizens' and residents' mobility and telecommunications systems through the construction and maintenance of structures and facilities in urban and rural areas. . . .

. . . I plan to provide consultation to other professionals, developers, and construction managers to allow them to bring better results to their clients. . . .

. . . .

I see the interest of potential customers, especially mobile operators and website sharing companies. I see opportunities in underground infrastructure technology used in various applications, such as data processing and battery bank to recharge electric vehicles, and mainly for telecommunications infrastructure.

A business plan for the Petitioner's company indicates that "[t]he Company will focus on managing telecommunication infrastructure projects." The plan further states that the company's "services will include providing antenna installation services on mobile phone towers and on top of buildings" and various support services such as "preparing budget estimates" and "inspect[ing] and review[ing] designs to monitor compliance with building and safety codes and environmental regulations."

Although the record shows that the Petitioner established a limited liability company in Florida in June 2019 and submitted a business plan for it, the Petitioner also submitted a June 2021 letter from [] [] a communications staffing service, offering the Petitioner “a Full-Time/Regular position . . . as a Project Coordinator . . . based out of [] CA.” The Petitioner signified his acceptance of this job offer by signing the job offer letter and an accompanying employment agreement. The Petitioner did not explain how his acceptance of this full-time position in California would be consistent with his operation of his own construction project management company in Florida. In the three-page statement in which he set forth his proposed endeavor in July 2021, the Petitioner does not mention [] job offer that he had accepted the previous month.

The Petitioner’s response to the Director’s May 2022 request for evidence (RFE) showed that, in August 2022, he accepted a job offer from [] taking “the full-time position of Construction Supervisor.” In a revised statement submitted with the RFE response, the Petitioner described his duties with [] and provided information about that company. He did not mention his own company, which had previously formed the basis of the proposed endeavor, or the June 2021 job offer from [] which he had also accepted.

The appeal, like the response to the RFE, centers around the Petitioner’s work at [] rather than his own company which had been the focus of the proposed endeavor as initially described. The information about [] does not indicate that the company is involved in “battery bank[s]” or “underground infrastructure technology”; rather, according to its 2020 *Sustainability Report* in the record, the company focuses on “tower structures, rooftops and other structures that support antennas used for wireless communications.”

While the Petitioner’s revised employment plans still involve the same general occupation, changes in employment will likely affect the manner and extent to which an individual’s work serves the national interest. In this case, the record identifies three different positions for the Petitioner: construction project manager at his own consulting company, which he formed in June 2019; project coordinator with [] which he accepted in June 2021; and construction supervisor with [] which he accepted in August 2022. These positions all involve overseeing the construction of telecommunications infrastructure, but the circumstances of the three positions are different and do not amount to the same proposed endeavor.² The Petitioner’s response to the RFE relied heavily on details specific to [] which played no part in the proposed endeavor as originally described.

The job offer from [] came more than a year after the Petitioner filed the petition. This change in circumstances after the Petitioner filed the petition cannot establish eligibility if the Petitioner did not already meet all eligibility requirements at the time of filing. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998) (holding that a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to requirements). The Director cited *Izummi* in the decision notice.

² One of the Petitioner’s initial arguments regarding the third *Dhanasar* prong was that, as the self-employed owner of his own company, “it would be impractical for [the Petitioner] to apply for a labor certification on his own behalf.” The Petitioner also asserted that, as a business owner, he would create jobs by hiring subordinates. Neither of these arguments apply to the positions at []

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner submitted a letter from a professor emeritus of construction management at [redacted] State University, who stated that the Petitioner's proposed endeavor has national importance for several reasons:

[I]t is critical . . . to have experts in both telecommunications and construction management to oversee new constructions in telecommunications infrastructure. . . . As a private entity seeking to provide telecommunication and construction management services to underserved areas with outdated infrastructures, [the Petitioner's company] will accelerate the process of quality telecommunications of underserved communities and make a significant impact on network services in the United States. . . .

. . . [T]he United States is expected to have a deficit in the skilled workforce within the construction industry . . . [and the Petitioner's] proposed endeavor will bring in more construction management expertise into the United States to stay abreast [of] industry demand. . . .

. . . [A]ccess to telecommunications services improves the welfare of communities, particularly in rural areas. . . . With [the proposed endeavor], the telecommunication industry will be able to fulfill the demand [for] services in underserved areas as [the Petitioner's company] offers assistance in minimizing project costs, granting more feasibility for telecommunication companies to operate in low-populated areas.

. . . [The Petitioner's] proposed endeavor of improving telecommunication services will resolve the issue of current telecommunication structures being overwhelmed with the sudden high volume of activity in networks.

The business plan for the Petitioner's company, submitted with the initial filing of the petition, contends that the proposed endeavor will benefit "the overall U.S. economy" by promoting "[e]fficiency and cost reduction," "[k]nowledge transfer" to new employees, "[i]ndirect job creation" and taxes resulting from the Petitioner's activity, but does not explain how the scale of these benefits will reach the level of national importance.³

Although the Petitioner referred to "rural areas" in his personal statement, the business plan specifies: "The Company will be dedicated to . . . effective consultation plans related to the construction and maintenance of urban structures." Much of the business plan concerns general information about

³ This again raises the question, however, whether the Petitioner will be working for his own company described in the business plan, or for [redacted] as some of the factors set forth only apply to the Petitioner's company.

construction management, including statistics about “residential construction,” although the Petitioner indicated that his business would focus on construction of telecommunications infrastructure.

The business plan also states: “In the beginning of business operations, the Company will focus on providing its services to clients in California. As the business develops, [the company] will expand its target area to Texas, Florida, New York, and Illinois, before eventually covering the entire U.S.” The Petitioner’s articles of organization show that the Petitioner established the company in [REDACTED] Florida, and the Petitioner has resided in Florida throughout this proceeding. As noted above, the Petitioner accepted a job offer from a California employer in 2021, but the record contains no evidence that the Petitioner actually began working for that employer. The business plan projects that the company would have seven employees at the end of its fifth year of operations; it does not explain how a staff that size could effectively “cover[] the entire U.S.”

In the RFE, the Director stated that the Petitioner had not shown the broader prospective impact of the Petitioner’s proposed endeavor. As noted above, the Petitioner’s response to the RFE included a substantially different proposed endeavor, based on employment with [REDACTED]. The Petitioner submitted materials showing that he was involved with [REDACTED] efforts to restore local service following Hurricane Ian, which struck Florida in September 2022. The Petitioner also submitted two of [REDACTED] annual *Sustainability Reports*, describing the overall economic impact of [REDACTED] national and international operations. Information about [REDACTED] size does not establish the national importance of the Petitioner’s work there; materials in the record indicate that [REDACTED] has over 1,000 employees in the United States. The Petitioner did not show that the collective impact of those workers is attributable in any large part to his own involvement. Likewise, evidence concerning the collective importance of the entire U.S. telecommunications industry does not convey national importance to the Petitioner’s specific proposed endeavor.

The Petitioner submitted a new letter from a professor of electrical engineering and computer science at [REDACTED] State University, who described [REDACTED] and the Petitioner’s duties there. The professor provided statistics to explain the national importance of the telecommunications industry as a whole, but these aggregate figures do not establish that the Petitioner’s proposed endeavor itself has national importance.

In the denial notice, the Director acknowledged documentation of the Petitioner’s work, but concluded that the Petitioner did not show that he has engaged in “work . . . on a national level.” Noting that the Petitioner’s business plan projected seven U.S. jobs, the Director also concluded that the Petitioner had not shown that the proposed endeavor would result in “significant U.S. economic impact or major job creation.” The Director determined that the Petitioner had not shown how the benefit from the revised proposed endeavor would extend beyond some of [REDACTED] customers.

On appeal, the Petitioner asserts that the Director selectively discussed the evidence “and did not analyze the TOTALITY of the evidence” (emphasis in original). The Petitioner states that the proposed endeavor “was explained in the Initial Filing. . . . However, since August 2022, he has worked full-time as a Supervisor Construction [sic] for [REDACTED]. . . . In both cases, he has demonstrated that his proposed endeavor . . . has a potential prospective impact.” In this way, the Petitioner acknowledges a significant change to the prospective endeavor. The Petitioner begins part of the appellate brief by stating “even though [the Petitioner] will develop his proposal through [REDACTED]

[redacted] . . . rather than his own company” The original and revised endeavors are both “in the field of Telecommunication,” but they are not substantively similar. The original proposed endeavor included factors that would only apply if the Petitioner were running his own business.

The appellate brief contains substantial quotations and statistics from prior record evidence, much of it meant to show the overall importance of the telecommunications industry, and the reach of [redacted] in particular. This information does not establish the national importance of the Petitioner’s work as one of over a thousand [redacted] employees in the United States, and it does not overcome binding case law and regulatory requirements that a petitioner must establish eligibility at the time of filing rather than rely on circumstances that occurred after filing. In this instance, elements of the Petitioner’s work with [redacted] contradict or supersede parts of the original proposed endeavor. The Petitioner does not directly argue, on appeal, that his original, pre-[redacted] proposed endeavor met all the *Dhanasar* requirements. Even before the Petitioner joined [redacted] elements of the original record contradict one another, indicating that his Florida-based company would serve “rural areas” while the business plan specified “urban structures” with an initial emphasis on “clients in California.”

The Petitioner stated, in his RFE response: “my proposed endeavor is to work in the United States as a Construction Manager.” A petitioner must provide specific information about how the proposed endeavor serves the national interest. *See Matter of Dhanasar*, 26 I&N Dec. at 889. Statistics showing that the collective efforts of workers in the Petitioner’s occupation serve the national interest do not establish the national importance of the Petitioner’s proposed endeavor.

The Petitioner has not presented a consistent proposed endeavor, and has not met his burden of proof to establish that the proposed endeavor meets the “national importance” element of the *Dhanasar* requirements. Detailed discussion of the remaining *Dhanasar* prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the other prongs.⁴

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.

⁴ *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).