



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 28456396

Date: SEP. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an accountant and entrepreneur, 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 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). 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. The Director concluded that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate his eligibility for the requested 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 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.”

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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 discretion², grant a national interest waiver if the petitioner demonstrates that:

- 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 Petitioner proposes to work in the United States for a tax planning and customs trade consultancy business that he established in Florida. The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree; however, he did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar prong. The Director further found that the Petitioner did not establish that he is well positioned to advance the proposed endeavor, and 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. Upon de novo review, we agree with the Director’s determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.³

A. Member of Professions Holding an Advanced Degree

The Director found that the Petitioner qualifies for classification as a professional holding an advanced degree based on the Petitioner holding “the equivalent of an advanced degree and at least [five] years of progressive post-baccalaureate work experience” However, the Director did not explain the basis for this determination. After reviewing the record, we disagree with the Director’s determination.

The record indicates that the Petitioner holds a bachelor in accounting services from [redacted] Universidade [redacted] in Brazil and has worked in the accounting field in Brazil. The Petitioner provided a copy of his diploma, academic transcripts, and an academic evaluation. The academic evaluation states, “Considering [the Petitioner’s] academic qualifications, it is my expert opinion that [the Petitioner] has an equivalent of a U.S. Bachelor’s Degree in Accounting.” The record shows that the Petitioner has the foreign equivalent of a U.S. bachelor’s degree in accounting.

However, the record does not reflect that the Petitioner has five years of progressive post-baccalaureate experience in his specialty. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present “evidence in the form of letters from current or former employer(s) showing that the [petitioner] has at least five years of progressive post-baccalaureate experience in the specialty.” (emphasis added). The record shows that the Petitioner earned his bachelor’s degree in accounting

² 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).

³ While we may not discuss every document submitted, we have reviewed and considered each one.

services on September 13, 2013. Although the Petitioner submitted two letters showing he has more than five years of experience in his profession, the letters do not demonstrate five years of experience after he earned his degree. A letter from [redacted] states that the Petitioner worked as a business consultant from April 18, 2011, to April 12, 2013, which is prior to the Petitioner earning his bachelor's degree in September 2013. Therefore, such experience does not qualify as post-baccalaureate experience. See 8 C.F.R. § 204.5(k)(3)(i)(B). The second letter from [redacted] states that he worked as an accounting manager for three years and 11.5 months, from June 1, 2015, to May 10, 2019. While this shows post-baccalaureate experience in his specialty, it is less than the five years required under the regulations. See 8 C.F.R. § 204.5(k)(3)(i)(B).

In sum, the record does not demonstrate that the Petitioner has at least five years progressive experience following his bachelor's degree as required by 8 C.F.R. § 204.5(k)(2).

The Petitioner has not established that he has an advanced degree above that of his bachelor's degree or that he has at least five years of post-baccalaureate experience. Therefore, we withdraw the Director's determination that the Petitioner is eligible to be classified as a member of the professions possessing an advanced degree.

B. Substantial Merit and National Importance

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

The Petitioner proposes to work as an accountant and the chief executive officer for his tax planning and customs trade consultancy business [redacted]. The Petitioner's definitive statement states that his business "is focused in providing consultancy in the compliance areas of classification, trade risk, taxes and import duties, as well as certifications, product testing authority and country-specific import licensing approvals." The business would focus "on facilitating a dominant economic correspondence between American companies [sic] and the Latin American market [sic]" The business plan further specifies that the Petitioner's business would "provide consulting services on customs, accountability, tax, and supply chain management to U.S. exporters with regards to international trade offerings" which "will help U.S. companies retain competitive advantage with their operations with Brazil and Latin America." We agree with the Director that the Petitioner's proposed endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that "the record does not show that the specific proposed endeavor stands to sufficiently extend beyond the company's clients and employees to affect the field or industry more broadly at a level commensurate with national importance." Since the Petitioner did not establish the national importance of his proposed endeavor, the Director found he did not meet the first prong of the Dhanasar framework.

The Petitioner contends on appeal that the Director did not apply the proper standard of proof, instead imposing a standard stricter than the preponderance of the evidence standard. The Petitioner further argues the Director erroneously applied the law by not giving “due regard” to the evidence submitted, specifically the Petitioner’s resume, his business plan, letters of recommendation, and industry reports and articles. Upon de novo review, we find the Petitioner did not demonstrate that his proposed endeavor satisfies the national importance element of *Dhanasar*’s first prong, as discussed below.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is “more likely than not” or “probably” true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the 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.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989). Here, the Director properly analyzed the Petitioner’s documentation and weighed the evidence to evaluate the Petitioner’s eligibility by a preponderance of the evidence.

On appeal, the Petitioner argues that his proposed endeavor has national importance, particularly because it will “generate substantial ripple effects upon key financial activities on behalf of the United States” and would be “a vital aspect of U.S. accounting operations and productivity, [sic] which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy.” (emphasis omitted). The Petitioner argues his proposed endeavor will benefit the United States “by creating jobs and economic stability.”

The Petitioner stresses on appeal that his more than 12 years “of progressive experience and acumen in the accounting field” and his educational credentials to argue that his “work offers broad implications to the United States’ accounting industry, specifically through his endeavors within key commercial segments.” (emphasis omitted). The Petitioner relies on his background to emphasize that he “has brought numerous advantages to the organizations that he has served” by stimulating “his served companies’ economic capacities” and prioritizing “customer satisfaction by ensuring all projects are aligned with customer’s actual needs, furthering customer loyalty.” The Petitioner argues the United States “would benefit from investing in well-versed accounting professionals such as [the Petitioner], who are knowledgeable regarding potentially profitable markets for U.S. environmentally friendly organizations in regions that are economically and politically strategic, yet extremely complex.” (emphasis omitted). He contends his “proposed endeavor will have multiple positive effects on the U.S. marketplace, thus enhancing business operations on behalf of the nation, and contributing to a streamlined economic landscape.” The Petitioner asserts his “proposed endeavor is clearly of national importance, when considering how much a professional with his caliber can contribute to the national interests, and to the U.S. economy, regardless of a labor certification.” (emphasis in original).

However, the Petitioner’s reliance on his academic credentials and professional experience to establish the national importance of his proposed endeavor is misplaced. His academic credentials and professional experience relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar*’s first prong. 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. See *id.* at 889.

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. The record does not demonstrate that the Petitioner’s proposed endeavor will substantially benefit the field of accounting, as contemplated by *Dhanasar*: “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *Id.* As pointed out by the Director, the evidence does not suggest that the Petitioner’s consulting business would impact the accounting field more broadly.

With the petition, the Petitioner submitted his statement and a business plan contending his proposed endeavor has national importance based on potential economic and national security benefits. The Petitioner claims that his proposed endeavor would “increase U.S. competitiveness and help relocate critical supply chains out of China while promoting Ally-shoring, [sic] a matter of national security [sic]” by facilitating business between the United States and Latin America. The business plan asserts that bolstering United States and Brazilian business relations would have a national impact on the strained supply chains in the United States and would reduce the United States’ dependence on China.

The business plan further asserts, “Financial and tax planning are critical in trade and an essential aspect of any financial plan” and that his company understands foreign tax legislation and will “provide clients with necessary guidance regarding their international banking operations” The business plan explains the Petitioner’s intended ownership and financial investment in the business; the business’ products and services; the business’ direct benefits to U.S. companies; an in-depth analysis of having a secure supply chain in the United States; business’ expertise with doing business with Brazil; proposed expansion throughout the United States; demand for accounting consulting products and services; and the business’ proposed marketing, staffing, and financial forecasts.

However, the Petitioner has not provided corroborating evidence to support his claims that his business’ activities stand to provide substantial economic and national security benefits to the United States. The Petitioner’s claims that his tax planning and customs trade consulting business will benefit the U.S. economy and national security has not been established through independent and objective evidence. The Petitioner’s statements are not sufficient to demonstrate his endeavor has the potential to provide economic and national security benefits to the United States, including improving the supply chain trade and the national security for the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that his proposed job duties as the accountant and chief executive officer for his business would impact the tax planning and custom trade industries more broadly, rather than benefiting his consulting business and his proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The business plan projects that in five years the consulting business will hire 88 direct employees, pay wages of over 15 million dollars, and generate almost 2.4 million dollars in national, state, and local taxes. However, the record does not sufficiently detail the basis for its financial and staffing

projections, or adequately explain how these projections will be realized. While the Petitioner expresses his desire to contribute to the United States, he has not established with specific, probative evidence that his endeavor will have broader implications in his field, will have significant potential to employ U.S. workers, or will have other substantial positive economic effects in Florida or the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *id.* Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 88 direct jobs, paying wages of over 15 million dollars, and generating almost 2.4 million dollars in tax revenue over a five-year period rises to the level of national importance.

The Petitioner further claims on appeal that the national importance of his proposed endeavor is evidenced in industry reports and articles. The reports and articles relate to the economic benefits of immigrants and entrepreneurship; the role of financial managers; investments in capital; stock market effects on the economy; the financial services industry; U.S. economic benefits from international trade and investment; labor shortages in the financial services industries; workforce concerns in the investment management industry; top world economies and effects on direct U.S. investment; and long-term investment in developing countries. We recognize the importance of the finance industry, international trade, and related careers, as well as the significant contributions from immigrants who have become successful entrepreneurs; however, merely working in the accounting, finance, and international trade fields or starting a tax planning and customs trade consulting business to support these industries is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Matter of Dhanasar*, 26 I&N Dec. at 889.

In *Dhanasar*, we 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. The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner’s proposed endeavor.

The Petitioner further claims on appeal that he demonstrated national importance with his resume and recommendation letters from colleagues, former employers, and a client of his business. The letters mainly discuss the Petitioner’s work experience and his professionalism in working to improve the accounting operations for his former employers and clients. The letters convey his accounting expertise and the importance of his work to specific projects which helped his employers and clients overcome accounting and finance challenges. For instance, a letter from the Petitioner’s former colleague emphasizes the Petitioner’s technical expertise in accounting which resulted in the Petitioner being promoted from an accounting consultant to an accounting manager. The letter also briefly describes how the Petitioner helped solve the company’s financial issues by providing international trade options for its raw materials. Letters from other colleagues similarly attest to the Petitioner’s accounting experience and his importance to improving the accounting operations for his employers and clients.

However, these documents relate to the second prong of the Dhanasar framework. See *id.* at 890. We acknowledge that the Petitioner provided valuable accounting, finance, and tax advice services for his employers and clients in the past. However, the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of his proposed endeavor will rise to the level of national importance, rather than only impacting his clients. The letters do not demonstrate that the Petitioner's work will have national or global implications in the fields of accounting, tax planning, and customs trade.

We further note that the record includes an expert opinion from [redacted] professor of practice at [redacted] University in [redacted] Oklahoma, providing an analysis of the national importance of the Petitioner's proposed endeavor stating, "[The Petitioner] will work in an area of substantial merit and national importance." (emphasis omitted). The opinion explains the duties of accountants and the benefits of companies using experienced accountants and financial experts to improve their operations, thereby generating tax revenue and employment opportunities. The opinion briefly mentions that U.S. businesses using a professional with the Petitioner's experience in accounting and finance will help them navigate doing business abroad.

The opinion's focus on the need for financial experts and accountants and how the Petitioner's professional experience makes him well positioned to help U.S. businesses, particularly those having an interest in international business, does not demonstrate that the Petitioner's specific endeavor may have a prospective impact in his field. The opinion does not focus on the Petitioner's specific endeavor and it having a potential prospective impact on the U.S. economy, or in the fields of his proposed endeavor, accounting, tax planning, and customs trade consulting. Simply stating that his work would support an important industry is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The Petitioner does not demonstrate that his proposed endeavor extends beyond his business and his future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as the accountant and chief executive officer of his proposed tax planning and customs trade consulting business offers original innovations that contribute to advancements in his industry or otherwise has broader implications for his field. The economic and national security benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed business' tax planning, and customs trade consulting work and the claimed economic results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. 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 record does not establish that the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree, or that he has met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner is not eligible for 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.