



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

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

In Re: 26903002

Date: SEP. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a general and operation manager, seeks second preference 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 immigrant 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 had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director did not make a finding on the Petitioner's qualification for the EB-2 classification as a member of the professions holding an advanced degree. 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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

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 (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;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

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

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she 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; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires the 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) 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. *Id.* at 890-91.

II. ANALYSIS

We will first address the threshold requirement that the Petitioner must qualify for classification under Section 203(b)(2)(B)(i) of the Act, as the Director did not make a finding on this issue.

¹ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

The Petitioner submitted his diploma and academic transcripts of a master's degree in business administration from [] University in the United States. Considering this evidence in the record, we conclude the Petitioner has established that he is eligible for the EB-2 classification as an advanced degree professional in accordance with 8 C.F.R. § 204.5(k)(2).

We now turn to the Petitioner's eligibility for the national interest waiver under *Dhanasar*. The Director found that the Petitioner's proposed endeavor does not have substantial merit and national importance because he did not identify a specific and consistent endeavor.² After reviewing the record, we find that the Petitioner demonstrated his proposed endeavor's substantial merit but not national importance under the first prong of the *Dhanasar* framework.

The Petitioner initially described his proposed endeavor as follows:

My career plan in the United States is to continue working as General and Operations Professional to advise U.S. companies on how to properly plan, direct, and coordinate the operations of public or private sector organizations. I intend to continue using my vast expertise and knowledge to provide expert managerial services to U.S. companies gained from over 14 years of experience. Additionally, my business experience working in the management of companies in the financial services, manufacturing, banking, sports, technology and retail industries will allow me to work with U.S. companies looking to capitalize in these sectors, especially including those doing business or planning on expanding their business internationally, with the greatest of ease. In fact, I have already received a job offer from a U.S. base company, [] to work in my field of endeavor as a Chief Operating Officer.

The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner included various industry reports and articles on a wide range of topics, such as the future of finance industry, proper company management, analysis of managerial profession, and importance of international companies and foreign investment in the United States. These documents provide general outlook on his profession as an operations manager and background information on the field of business and finance. Therefore, we find that the Petitioner's initial endeavor has substantial merit and withdraw this portion of the Director's decision.

However, the evidence does not establish that the Petitioner's endeavor meets the national importance element under the first prong of *Dhanasar*. In responding to the Director's request for evidence (RFE), the Petitioner submitted an updated professional plan which states that he would work as a "General and Operations Professional to advise U.S. companies on how to properly plan, direct, and coordinate the operations of public or private sector organizations" but also introduced his own consulting company, []. The Petitioner's business plan states that the company's mission is to help "family-owned businesses to prepare for succession and adapt to a more contemporary approach in operations." The Director found that the new set of facts regarding the proposed endeavor constituted a material change in an effort to make a deficient petition conform to USCIS requirements and cited to *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (a

² The Director also found that the Petitioner did not meet the second or third prongs of the *Dhanasar* analytical framework.

petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements).

On appeal, the Petitioner does not dispute, or even address, the change in his proposed endeavor. Therefore, we deem this issue to be waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (when a respondent fails to substantially appeal an issue addressed in a decision, that issue is waived on appeal); *see also United States v. Fernandez Sanchez*, 46 F.4th 211, 219 (4th Cir. 2022) (finding the failure to raise arguments regarding eligibility waives those arguments on appeal).

Instead, the Petitioner makes general assertions that the Director did not apply the proper standard of proof and erred by not giving “due regard” to the evidence submitted. However, the Petitioner does not support these assertions with specificity as to the record or to the Director’s conclusions.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what he claims 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 his 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 his evidence to evaluate the Petitioner’s eligibility by a preponderance of evidence.

We further note that in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake” and its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner submitted industry reports and articles discussing the importance of the business field and management careers; however, they do not provide any specific information about the Petitioner’s proposed endeavor and are insufficient to establish national importance of the endeavor.

Similarly, the Petitioner’s recommendation letters do not address his specific endeavor’s “potential prospective impact,” *id.*, but discuss only his past accomplishments and contributions to his previous employers and client companies. For instance, [REDACTED] a board member of [REDACTED] indicates that the Petitioner’s “unique blend of business knowledge, practical experience and interpersonal engagement skills has made a significant contribution to our company’s success.” [REDACTED] a former chief operating officer of [REDACTED] praises the Petitioner for building “a process that supplied over 500 stores in 13 states in the Southeast” in the company’s logistics distribution and warehouse department and for developing “a complex budget that saved the company over 4 million dollars in transportation cost.” While the recommendation letters indicate the high regard for the Petitioner and his work, they do not discuss the Petitioner’s proposed endeavor or its specific impact.

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. On appeal, the Petitioner claims that as a general operations manager, he “can advise corporations about potential opportunities for business development and sales expansion, as well as effective market strategies and initiatives” and his activities “will have multiple positive effects on the U.S. marketplace, thus enhancing business

operations on behalf of the nation and contributing to a streamline economic landscape.” The Petitioner further contends that his endeavor will “help the U.S. stay competitive by bringing competitive services, helping develop the country, and producing income for the U.S. economy.”

However, generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). Here, the record does not demonstrate that his endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Petitioner must submit relevant, probative, and credible evidence to establish the national importance of the proposed endeavor. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner has not provided evidence to support that his endeavor as a general operations manager for one or more employers would have substantially positive effects or would otherwise have broader implications beyond those employers to impact the U.S. economy more broadly at a level commensurate with national importance. The record does not contain corroborating information or evidence regarding any projected U.S. economic impact or job creation directly attributable to his operational managerial activities, that would reach the level of “substantial positive economic effects” as contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 890. 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.

In addition, the Petitioner does not demonstrate how his proposed endeavor will substantially benefit the field in which he will work, 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.* The Petitioner does not offer any evidence that his skills differ from or improve upon those already available and in use in the United States.

Based on the foregoing, we find that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner’s 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 Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that the Petitioner has not established eligibility 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.