



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

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

In Re: 32890536

Date: SEP. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business director, 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).

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 pursuant to 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 the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. Our precedent decision in *Matter of Dhanasar* provides the framework for adjudicating national interest waiver petitions. 26 I&N Dec. 884, 889 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ 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

¹ *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Petitioner intends to come to the United States to work as a business director with his companies: [REDACTED] in the real estate industry, and [REDACTED] operating in the digital marketing and healthcare industries. His proposed endeavor involves “champion[ing] financial and economic welfare through the development of ambitious business ventures aimed at improving . . . citizens’ access to healthcare and to housing.” The Petitioner contends that his background as a business director in Brazil has given him the necessary experience to succeed in this role in the United States as a self-employed entrepreneur and business director.

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree, and he had established his proposed endeavor – working as a business director through his companies, working in the real estate industry, and developing business ventures to improve access to healthcare and housing – has substantial merit. However, the Director concluded the Petitioner did not establish that his proposed endeavor has national importance as required to establish eligibility for a national interest waiver under the *Dhanasar* framework. Although the Director found the Petitioner established he was well-positioned to advance his proposed endeavor, they concluded the Petitioner did not establish that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus a labor certification. We agree that the Petitioner has not established that his proposed endeavor has national importance and will dismiss the appeal accordingly.²

The Director found that the Petitioner did not establish that his proposed endeavor met the national importance element of the first prong of the *Dhanasar* framework. Specifically, the Director determined the Petitioner did not establish his proposed endeavor would have broader implications to the fields of business development and real estate or have significant potential to employ U.S. workers or otherwise have substantial positive economic effects such that he established its national importance. The first prong of *Dhanasar*, 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. *Dhanasar*, 26 I&N Dec. at 889.

The record does not establish the Petitioner’s proposed endeavor will have substantial positive impacts on the U.S. economy. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would rise to the level of national importance. An endeavor may have national importance if it “has significant potential to employ U.S. workers or has other substantial positive

² If the Petitioner does not meet the first prong of the *Dhanasar* framework, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the remaining requirements under the second and third prongs.

economic effects, particularly in an economically depressed area” *Id.* at 890. The Petitioner seeks to come to the United States to extend his existing ventures and expand mobile applications that have been utilized in Latin America to the U.S. market. He asserts on appeal that his proposed endeavor of working as a business director will generate jobs for U.S. workers and positively contribute to the U.S. economy. In his business plan, the Petitioner indicated his company, [REDACTED] [REDACTED] would generate 38 jobs and pay more than \$5 million dollars in taxes in the first five years of business. However, the business plan does not provide sufficient explanation for the basis of these projections. Further, even if sufficient basis were provided for the proposed endeavor’s revenue and job creation projections, these figures do not establish that the Petitioner’s company would operate on a scale rising to the level of national importance. The Petitioner has not explained how his proposed employment metrics and revenue would have impact beyond his business’s area of intended operations. Similarly, he claims his work with [REDACTED] will generate economic growth and job creation; however, again, he has not explained how this impact would extend beyond his intended area of operation and rise to the level of national importance. Upon de novo review, the Petitioner did not establish his proposed endeavor would have substantial positive economic effects.

Further, the evidence submitted by the Petitioner does not establish his proposed endeavor would operate on such a large scale to have a national impact on any of his claimed industries. When determining the national importance of a proposed endeavor, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; rather, we focus on “the specific endeavor that the foreign national proposes to undertake.” *Dhanasar* 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.* The Petitioner argues that his proposed endeavor will help fill an existing need for STEM workers in key fields, including healthcare, by creating more jobs to employ them, as well as having a broad impact on those fields. He asserts on appeal that his “proposed endeavor in real estate development supports economic growth and job creation.” Additionally, “[h]is innovative app[lication]s will enable U.S. residents and especially underserved communities, to access affordable and high-quality healthcare services, while his digital marketing innovations contribute to the evolving marketing landscape, demonstrating a comprehensive impact on the U.S. economy.” He contends “[w]hile his comprehensive digital marketing solutions, and specifically the app[lication]s, will undoubtedly benefit the individuals who download them, their innovative nature carries strong potential to revolutionize several industries.” Although the Petitioner’s specific ventures have the potential to provide valuable services to his clients, he did not establish his specific proposed endeavor will have substantial national implications or have a broader impact beyond the individuals directly served by his company. The Petitioner also has not established that his proposed endeavor stands to significantly reduce a national labor shortage in the STEM field as claimed. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. While we acknowledge the importance of the fields of business, real estate, healthcare, and STEM, the Petitioner did not establish his proposed endeavor would have broader implications to the overall fields to establish its national importance. *See Dhanasar* at 893 (finding the petitioner did not establish the proposed activities would impact the field more broadly to rise to the level of national importance).

Accordingly, we find that the record does not demonstrate national importance of the Petitioner’s proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, and the

Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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.

ORDER: The appeal is dismissed.