U.S. Citizenship and Immigration Services

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

In Re: 35739685

Date: JAN. 30, 2025

Appeal of Texas Service Center Decision

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

The Petitioner 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 the Petitioner's eligibility for the requested national interest waiver. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*.

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. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (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 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
- On balance, waiving the job offer requirement would benefit the United States.

*Id.*

## II. ANALYSIS

The Director determined the Petitioner qualified as an advanced degree professional, but that he did not establish eligibility for a national interest waiver under the *Dhanasar* analytical framework. For the reasons set forth below, we agree that the Petitioner has not demonstrated eligibility under the *Dhanasar* framework and dismiss the appeal.

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. *Id.* at 889.

The record reflects the Petitioner intends to serve as the chief executive officer (CEO) of his company, [redacted] to "provide comprehensive consulting services [to] medical device manufacturers throughout the U[nited] S[tates] that are looking to expand their operations through export-based activities . . . [and] will also provide sales mediation services." Specifically, he intends to "establish[] a unique and much needed fully integrated sales strategy, operations and investments to open up more markets [for] U.S. companies . . . and bring [them] new international customers." While his company will not directly distribute the medical devices in the foreign market, it will focus on managing the administrative and commercial aspects of the exports. In addition to marketing U.S. manufacturers products abroad and mediating sales, the company will also offer consulting services to help companies navigate complex regulatory requirements abroad. The Petitioner asserted that the company will initially target manufacturers looking to expand their reach to Brazil, and eventually specialize in Latin American and Asian medical device markets as well. Ultimately, the Petitioner asserted that, by offering consulting and sales mediation services, he will help U.S.-based manufacturers "extend their operations, which will lead to profits, risk-mitigation effects, improved competitiveness and market share, and economies of scale." And he claimed that he has "the necessary skills that will allow [his] [c]ompany to help medical device manufacturers overcome the main challenges that affect their operations and achieve higher returns by expanding their markets."

In support of this endeavor, the Petitioner submitted a five-year business plan, multiple recommendation letters from colleagues and others in the industry commending the Petitioner's expertise and business acumen and expressing interest in partnering with his company, and documents

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

summarizing the Petitioner's previous successful projects in the industry. In addition, the Petitioner provided evidence of his incorporation of the company, its marketing website, and agreements and letters of intent with prospective clients and suppliers. The Petitioner also provided articles, industry reports, and various government publications discussing the medical device manufacturing industry, the exports of medical devices, foreign investments, as well as government publications on U.S. exports and trade.[2]

Upon review of the record, the Director concluded that, while the Petitioner's endeavor is substantially meritorious, the evidence did not demonstrate the Petitioner's proposed endeavor has national importance. Specifically, the Director determined that the Petitioner had not shown that his company would offer benefits more broadly at a level commensurate with national importance, beyond the direct benefits provided to its prospective customers. Moreover, the Director determined that he did not demonstrate his proposed endeavor has a significant potential to employ U.S. workers or otherwise generate substantial positive economic effects contemplated in *Dhanasar*, nor did the record establish that the endeavor will broadly enhance societal welfare. Accordingly, the Director concluded that, because the Petitioner did not establish the national importance of his endeavor under the first prong of the *Dhanasar* framework, he was not eligible for the requested national interest waiver.

On appeal, the Petitioner generally disagrees with the Director's conclusions and claims that the Director applied a heighted standard in their review, and failed to properly assess the national importance of his proposed endeavor under the *Dhanasar* analytical framework. As an example of this, he claims that the Director only considered the prospective job creation of his endeavor and seemingly required his business model to offer original innovations to establish the national importance of his endeavor. Additionally, the Petitioner asserts that the Director erred by requiring that he show his specific endeavor was funded by government initiatives or otherwise named in public announcements related to specific initiatives.

The Petitioner also disagrees with the Director's conclusion that he relied on "general assertions" to establish the national importance of his endeavor, claiming that he was not informed of this in the Director's request for evidence (RFE), asserting that had he "been informed of this concern, [he] would have gladly submitted additional documents to address it." Although the regulation at 8 C.F.R. § 103.2(b)(8)(iii) gives USCIS the discretion to issue an RFE, the regulation permits the Director to deny a petition for failure to establish eligibility without first having to request evidence regarding the ground or grounds of ineligibility identified by the Director. Moreover, the appeal process provided the Petitioner another opportunity to supplement the record with additional evidence to establish that he is eligible for a national interest waiver. While the Petitioner submitted a brief, he did not supplement the record with new evidence on appeal.

We also disagree with the Petitioner's assertion that the Director applied a heightened standard of proof. The Director did not only consider the prospective job creation in evaluating the national importance of the Petitioner's endeavor; rather, the Director concluded that the evidence did not support the Petitioner's assertions of the economic impact, and specifically addressed the claimed prospective job creation, concluding that the Petitioner had not substantiated their claims or provided a basis for their projections. And, contrary to the Petitioner's assertions, the decision reflects that the

[2] While we do not discuss every piece of evidence in the record, we have reviewed and considered each one.

Director considered multiple ways the Petitioner could have established the claimed substantial economic impact of his endeavor. Moreover, the Director did not focus exclusively on the claimed economic benefits of the Petitioner's endeavor when evaluating its national importance, they also concluded that he did not establish his endeavor will have broader implications within the healthcare industry. Likewise, the Director did not require the Petitioner to establish that his endeavor was funded by government initiatives or specifically named in press releases, but explained why the evidence relied upon by the Petitioner, including various government publications relating to federal government initiatives did not establish the national importance of his *specific* proposed endeavor, given that they did not establish how his *specific* endeavor would meaningfully impact these initiatives.

Turning to our review of the record, we agree with the Director that the record does not establish, by a preponderance of the evidence, the Petitioner's proposed endeavor rises to the level of national importance contemplated in *Dhanasar*. In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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 record does not establish that the Petitioner's proposed endeavor will result in broader implications at a level commensurate with national importance, beyond the direct impact to his prospective clients. On appeal, the Petitioner asserts that his company's expansion will directly support the growth and international reach of the U.S. medical device sector and enhance its competitiveness on a global scale. He claims that by partnering with large healthcare providers, his company will promote the adoption of U.S. medical technologies abroad leading to improved health care outcomes in the regions using these technologies, as well as innovation within the U.S. medical sector. Yet, the Petitioner does not elaborate on what specific innovations or advancements will result from his company, nor is this apparent from his business plan. And while we agree with the Petitioner that it is not required for a petitioner to establish their endeavor will result in innovations, he must still support his claims in the record. Because the Petitioner claims broader implications due to driving innovation in his field, he must support these assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See e.g., 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).

While the Petitioner has shown that his company's services could be beneficial to his prospective clients, this is akin to how the benefit of someone's teaching is generally only directly beneficial to the students being taught and not the wider population. In *Dhanasar*, we discussed how teaching would not impact the field of education broadly in a manner which rises to national importance. *Id.* at 893. By extension, activities which only benefit the Petitioner's prospective clients, like the services

outlined in the Petitioner's business plan, would not lead to broader implications at a level commensurate with national importance.

On appeal, the Petitioner also asserts that the Director did not consider his company's "broader economic contributions" including the indirect jobs created by his company. We disagree. The Director did address the Petitioner's assertions regarding the indirect job creation, and concluded that the Petitioner had not explained how relying on modeling systems based on the management consultant industry in Florida properly captured the impact of his company focused on increasing foreign investment. Rather than address these conclusions on appeal, the Petitioner reasserts claims previously made before the Director regarding the multiplier effect of his operations. While we acknowledge the Petitioner's statements, we agree that he has not shown that his endeavor will result in a significant potential to employ U.S. workers or otherwise result in substantial positive economic effects.

We acknowledge the projections in the business plan provided; however, like the Director, we conclude that the Petitioner has not provided sufficient explanation for the basis of these projects, or otherwise supported them with probative evidence in the record. On appeal, the Petitioner asserts that these projections are based on "market trends and economic analyses," but he does not explain how he used these trends to determine the employment projections. And, even if the endeavor's revenue and job creation projections were sufficiently corroborated, they do not establish that the endeavor would operate on a scale rising to the level of national importance.

The Petitioner also emphasizes the "ripple effects" of his endeavor on the U.S. economy, and claims that by increasing the volume and value of exports, the company will support the U.S. economy through improvements in trade balance, and increasing the GDP. Yet, as stated, when considering an endeavor's national importance, we focus on the particular endeavor. *See Dhanasar* at 889. The Petitioner has not shown that the "ripple effects" of his endeavor, which are oftentimes significantly attenuated and unconnected with a particular endeavor, establish that his particular endeavor will result in "substantial economic effects" as contemplated in *Dhanasar*. *Id.* at 890. While any basic economic activity may result in economic benefits, the record does not show how the Petitioner's specific endeavor will result in substantial economic benefits contemplated in *Dhanasar*.

We are also not persuaded by the Petitioner's claims that his proposed endeavor is nationally important given it societal impacts and the fact that it is aligned with federal initiatives. His endeavor's alignment with federal initiatives may speak to the substantial merit of the endeavor, but it does not establish the specific endeavor's potential prospective impact, nor does the Petitioner establish how his endeavor will meaningfully impact these broad initiatives. Instead, the record reflects that the prospective impact of the Petitioner's work will be limited to his prospective clients. And the Petitioner's assertions that his company will broadly enhance societal welfare by supporting global health initiatives and environmental stability is also not supported by the record. Again, while the alignment with these initiatives support the substantial merit of the endeavor, the Petitioner has not shown how his endeavor would meaningfully impact these initiatives.

Additionally, the testimonial evidence in the record, including the letters of recommendation provide little probative value in establishing the national importance of the Petitioner's endeavor as they primarily focus on the Petitioner's past experience without addressing the prospective impact of his

endeavor. And while some of the recommendation letters address interest in partnering with the Petitioner's company in the United States, the letters do not establish how those partnerships will lead to broader implications to the industry at a level commensurate with national importance. We recognize that the Petitioner has had a successful career, but a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar* at 890. The issue here is whether the Petitioner has demonstrated the national importance of his proposed endeavor. We conclude he has not.

For the reasons discussed, the Petitioner has not demonstrated that his proposed endeavor would be of national importance, and he therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework.

## 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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility under *Dhanasar*'s second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

**ORDER:** The appeal is dismissed.