U.S. Citizenship and Immigration Services

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

In Re: 32719105

Date: JULY 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a software engineer, 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but 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 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 demonstrates eligibility for the underlying EB-2 classification, 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

*Id.*

## II. ANALYSIS

In his Work Plan submitted initially, the Petitioner states he will establish a privacy consulting business "to empower diverse businesses to create and implement privacy-focused systems while ensuring adherence to privacy regulations." The Petitioner explains he will concentrate on privacy-focused distributed systems, data anonymization and differential privacy, and regulatory compliance mastery. The Petitioner states he also plans to write a book about privacy for a broad audience.

In his Work Plan submitted in response to the Director's request for evidence (RFE), the Petitioner adds he will create original software applications and platforms to "address nationally important projects at large scale enterprises" and enhance the U.S. government's information technology infrastructure. The Petitioner explains that his book will educate the public on privacy issues and contribute to national discourse on data protection.

In response to the Director's RFE, the Petitioner also submitted a business plan for a technology consultancy company, [redacted] which he would lead and would be based in [redacted], Texas. The business plan states the company would serve the healthcare industry, e-commerce, the finance sector, social media, public sector agencies, defense and military, the education sector, infrastructure and utilities, and domestic and international markets.

The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

### A. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined the Petitioner's proposed endeavor has substantial merit. We agree.

The Director concluded, however, that the Petitioner did not establish the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that his proposed endeavor would have substantial positive economic effects or extend beyond his future company and clients.

On appeal, the Petitioner asserts the Director misapplied *Dhanasar* by requiring the Petitioner to show the potential to create a significant economic impact or substantial positive economic impact. Although the Director did not use the exact language from *Dhanasar* in parts of the denial decision, de novo review of the relevant evidence shows no error in his ultimate determination. The Petitioner's company's business plan projects a net profit of $304,850 the first year, increasing to $875,350 in the third year, and a cash balance of $13,380 the first year and $13,583 in the third year. The business plan states the company would employ a total of six people and estimates the company's net worth as $29,413 in the first year, decreasing to $11,924 in the third year. The Petitioner did not submit evidence that these financial forecasts indicate substantial positive economic effects on a level commensurate with national importance. *See id.* at 890 (discussing "substantial positive economic effects").

The Petitioner claims he has shown that his proposed endeavor has significant potential to employ U.S. workers because under *Dhanasar*, "significant potential to employ U.S. workers" may show national importance and his company will employ six people. The Petitioner asserts that in *Dhanasar* we did not require the potential to employ a significant number of U.S. workers. Regardless of which word "significant" modifies in this portion of the *Dhanasar* decision, the Petitioner has not established that his company's employment of six individuals demonstrates "significant potential to employ U.S. workers." *See id.*

The Petitioner further asserts the Director erred by noting there was no evidence that U.S. companies sought the Petitioner's company's services. We agree this issue is not dispositive of whether the Petitioner's proposed endeavor has national importance.

The Petitioner claims he established the national importance of his proposed endeavor because the evidence submitted initially and in response to the RFE "provided ample documentation of [his] prospective endeavor manifested in a business plan, his achievements, [and] the connection between his achievements and his business plan." The Petitioner submitted letters from colleagues attesting to his achievements at companies such as [redacted] and [redacted] These letters praise the Petitioner's work, but do not indicate that any of his achievements extended beyond these companies to impact his field more broadly. *See id.* at 889 (explaining "we look for broader implications").

The Petitioner also submitted a letter from C-B-[2], Professor of Computer Engineering at the [redacted] expressing his opinion that the Petitioner qualifies for a national interest waiver. C-B- states the Petitioner's proposed endeavor has a national and global impact because he is researching privacy issues in genomic data sharing and the Petitioner's company will provide cyber security to healthcare companies and researchers. The Petitioner does not discuss this research in his work or business plans or provide any evidence of the publication or other dissemination of his research in his field.

C-B- also claims the Petitioner's proposed endeavor has substantial positive economic effects because IT consulting is a key industry in the United States, the global data privacy software market was $1,692 million in 2021 and is estimated to reach $35,088 million by 2030, and the Petitioner's company will

[2] We use initials to protect the privacy of the referenced individual.

provide economic benefits to small businesses, which are the majority of businesses in the United States. C-B- does not specify, however, how the Petitioner's work would extend beyond his company's clients to impact the IT consulting field, global data privacy software market, and small businesses in a manner commensurate with national importance. *Cf. id.* at 892 (stating Dhanasar submitted probative expert letters describing the importance of his specific research as it relates to U.S. strategic interests).

C-B- further claims the Petitioner's proposed endeavor has national importance because it impacts cyber security, which the Biden-Harris Administration has made a top priority and is important to societal welfare. The Petitioner submitted articles discussing Cisco's 2023 data privacy benchmark study, U.S. data privacy laws entering a new era in 2023, federal privacy legislation, six industries most affected by security breaches, penalty imposed on Twitter for breaking its privacy promises, and the Federal Trade Commission's (FTC's) imposition of a penalty and new privacy restrictions on Facebook. These articles attest to the importance of cyber security in the United States, but they do not mention the Petitioner or his proposed endeavor. Our assessment of national importance does not focus on the importance of a field or industry in general, rather it "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, none of the articles discuss the Petitioner, or otherwise address the potential prospective impact of his proposed endeavor.

C-B- also asserts the Petitioner's proposed endeavor has national importance because he will operate a small business and recent legislation provides aid to small businesses; and the Departments of State and Homeland Security have taken action to advance opportunities for Science, Technology, Engineering, and Mathematics (STEM) experts and entrepreneurs. The Petitioner did not submit evidence regarding federal initiatives for small businesses or advancing opportunities for STEM experts and entrepreneurs, and how his proposed endeavor would impact these initiatives. United States Citizenship and Immigration Services recognizes the importance of progress in STEM fields and the essential role that individuals with advanced STEM degrees have in fostering such progress. 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual/. However, "in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance." *Id.* Here, the Petitioner has demonstrated the substantial merit of his proposed endeavor but has not established its national importance.

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. Here, the Petitioner has not established that his proposed endeavor stands to sufficiently extend beyond his company's clientele to impact his field more broadly at a level commensurate with national importance.

B. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of his specific proposed endeavor and he does not meet the first prong of the *Dhanasar* framework. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility under the second and third prongs of 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

The Petitioner has not established the national importance of his proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, he has not demonstrated that he is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

**ORDER:** The appeal is dismissed.