U.S. Citizenship and Immigration Services

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

In Re: 31160612

Date: JUNE 4, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur specializing in e-commerce, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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 Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner qualified for a 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.

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." *Id.* 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 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.

*See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

## II. ANALYSIS

The Director concluded that the Petitioner qualified as a member of the professions holding an advanced degree. The remaining issue to be determined on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner initially stated that he intended to operate a company providing e-commerce operational and consultancy services to small businesses in the United States. The Director concluded that, while the Petitioner's proposed endeavor had substantial merit, he did not demonstrate that his proposed endeavor had national importance. On appeal, the Petitioner asserts that the Director did not give due weight to certain evidence and contends that the provided evidence demonstrates the national importance of his endeavor. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his endeavor in order to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

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. *Dhanasar*, 26 I&N Dec. at 889.

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." *See Dhanasar*, 26 I&N Dec. 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.* 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. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. In *Dhanasar* we

[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 to be discretionary in nature).

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 Petitioner provided industry reports, articles, presidential administration fact sheets, an expert opinion letter, and a U.S. Department of Treasury memorandum. This documentation discusses immigration to the United States, the impact of the global pandemic on the economy, the role businesses play in the economy and in enhancing societal welfare, and the current administration's business initiatives. While this material provides general information related to business entities and factors that influence the economy, it does not provide insight into the Petitioner's plan to operate an e-commerce consultancy company or show how this specific endeavor would have a potential prospective impact of national importance.

The record also includes letters of recommendation from the Petitioner's former associates discussing his skills and experience. We note that evidence of the Petitioner's experience and performance generally relates not to the national importance of an endeavor, as discussed in the first prong of *Matter of Dhanasar*, but to the second,[2] discussing whether an individual is well positioned to advance an endeavor. As such, the letters do not sufficiently demonstrate the national importance of the Petitioner's proposed endeavor.

The Petitioner provided the following description of his proposed endeavor in response to a request for evidence:

> [The Company] will be an e-commerce business specializing in various aspects of digital commerce, such as dropshipping, wholesale arbitrage, private labeling, and consultancy services, with a focus on consumer-packaged goods, particularly in the kitchen and home goods sector.
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> . . .
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> In addition to its retail operations, the Company will function as a leading digital agency and consultancy firm, providing expertise and guidance to businesses and partner companies in the field of dropshipping. It will offer valuable insights into e-commerce practices, such as marketplace management, inventory management, search engine optimization (SEO), digital marketing, and data scraping.
>
> . . .
>
> As a business developer, [the Petitioner] is equipped to help enable small businesses to expand and accelerate the economic recovery, particularly by disseminating the cutting edge "dropshipping" technique through his business.

[2] Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision.

While the Petitioner offered an overview of the services he intends to provide through his company, his assertions regarding the national importance of his endeavor rely generally on the growing presence of e-commerce in the global marketplace and the increased use of the dropshipping model in online retail. The Petitioner has not provided independent evidence or otherwise explained how his company, one of many operating in the field of e-commerce, would have a prospective national impact on the field or on an economy of any scale. For example, the business plan anticipates hiring 15 individuals by the conclusion of its fifth year of operation and generating a net revenue of $3,665,191. The plan does not, however, provide an objective basis for these projections, nor are the numbers corroborated by probative evidence sufficient to demonstrate that it is likely the company will have a positive national economic impact or a national prospective impact within the field. And while the business plan contains statements referring to revenues and partnerships attained by the company, the record does not include documentation supporting those statements. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner initially described his company as specializing in e-commerce, including the provision of business development consultancy to assist in the growth of small businesses. The Petitioner submitted an expert opinion letter discussing in general terms the importance of small businesses to the economy and asserting that the proposed endeavor aligns with federal initiatives to support small businesses. He also emphasized that organizations investing in business development are more likely to grow and positively impact the economy. While this letter discusses the collective influence of all businesses, in general, on the economy, it does not specifically detail how the Petitioner's company would impact the economy on a national scale.

The Petitioner also stated that his company would provide dropshipping services, a business model in which products purchased from online stores are shipped directly to customers by suppliers or manufacturers. The expert opinion letter provided the following:

> With the help of its private dropshipping accounts, [the company] will help generate income and provide comprehensive dropshipping agency and advisory services to potential clients. A third of online businesses have adopted dropshipping sales as their primary work model . . . . The United States Dropshipping Market size was estimated at USD 13.92 billion in 2020, is expected to reach USD 15.64 billion in 2021, and projected to grow at a compound annual growth rate (CAGR) of 9.65% reaching USD 24.20 billion by 2026.

The expert opinion letter does not clarify how the Petitioner's company would impact or demonstrate its own importance to the economy or industry within such a massive market. On appeal, the petitioner reiterates his company's intention "to deliver high-quality kitchen and home goods at affordable prices" and "utilize outsourced managers who get paid to set up the stores, and process orders for fulfillment on Amazon." He also states, "Entrepreneurs like [the Petitioner] who specialize in various aspects of digital commerce contribute to technological advancement within the country." He further asserts the following:

> [The expert opinion letter] notes that the impact of [the Petitioner's] abilities in business development could affect the economy and technological competitiveness "on a

> national level due to his capacity to provide innovative solutions that could support numerous applications and endeavors in the United States."
>
> . . .
>
> As a business developer, [the Petitioner] is equipped to help enable small businesses to expand and accelerate the economic recovery, particularly by disseminating the cutting edge "dropshipping" technique through his business.

Neither the Petitioner nor the expert opinion letter explain how the Petitioner's entrance into a market of the magnitude described would have positive implications for that market or the economy. The size of the market itself, according to the record, would not support the assertion that dissemination of the "technique" by the Petitioner's company would have a national impact on the economy. Further, the expert opinion letter's assertions of the potential of the Petitioner to provide innovative solutions that could support multiple endeavors in the United States is vague and does not provide insight into how his company would impact the dropshipping market at the level of national importance.

The Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. Specifically, he has not shown that his business stands to provide substantial economic benefits to any particular locality or to the United States overall. While the business plan explained in general terms that his company's services would benefit the U.S. economy because it would help businesses grow, that reasoning was not based on any objective evidence related to his specific proposed endeavor to operate a consultancy company. As such, the business plan does not demonstrate that the prospective benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Although the Petitioner claims that his company will positively benefit a low-income area, it is not clear how a business of the size and scope described in the business plan would positively impact a given region in which either his employees or clients are located. The Petitioner has not provided evidence to show that he would employ a significant population of workers in a particular region, nor has he shown that his proposed endeavor would offer a region or its population substantial economic benefits through employment levels, business activity, or tax revenue.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because 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 agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

**ORDER:** The appeal is dismissed.