U.S. Citizenship and Immigration Services

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

In Re: 30495880

Date: JUNE 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is a digital marketing specialist who 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 (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that the Petitioner merits a discretionary waiver of the job offer requirement in the national interest. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 an NIW, 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.

Once a petitioner demonstrates eligibility for the 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 NIW petitions. *Dhanasar* states that USCIS may, as matter of discretion, grant an NIW 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.

The purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining four U.S. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny an NIW to be discretionary in nature).

## II. NATIONAL INTEREST WAIVER

The Petitioner described his proposed endeavor as partnering with American universities to market or promote their courses through e-learning, which would take place on his existing platform. He indicated this endeavor would allow a large number of American universities to reach prospective national and international students, while also increasing course diversity and availability of formal studies to students across the globe. In other words, the Petitioner appears to intend to act as a middle-man or an agent to promote existing online courses that American universities already offer.

### A. Substantial Merit and National Importance (Collectively *Dhanasar's* First Prong)

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.

Turing to national importance, the Director noted that the Petitioner claimed and provided his personal statements, an opinion letter, material relating to the Petitioner's website or platform, as well as employment and other types of letters. The Director determined the business plan did not reflect the number of jobs that would be created, the organizations or education facilities the business has partnered with, the prospective growth of the business, the area the business would economically impact, and how the business would impact an aspect associated with national importance.

Further, the Director found the record to contain insufficient evidence to support the Petitioner's and other's statements in the record. Evaluating the platform, the Director acknowledged some positive related aspects, but concluded those materials failed to show significant potential to employ U.S. workers. The Director summed up their analysis stating the Petitioner did not establish how the proposed endeavor would impact the economy at a regional or national level consistent with national importance, nor did he demonstrate how his work would have broader implications for the digital marketing and online learning fields.

On appeal, the Petitioner observes the Director's findings that he does not submit sufficient documentary evidence of how the business will support U.S. initiatives, address areas of digital learning, and improve access to education not currently available while improving the U.S. economy. The Petitioner posits that the business plan addressed all these points, and he relies on this same plan to directly refute the Director's analysis.

When we evaluate national importance, the relevant question is not the importance of the industry or profession in which the foreign national will work. Rather, we focus on the "the specific endeavor that the foreign national proposes to undertake" and we look to evidence illustrating the "potential prospective impact" of his actual proposed work. *See Dhanasar*, 26 I&N Dec. at 889. A petitioner

must demonstrate the proposed endeavor will "impact the field . . . more broadly" (*Id.* at 893) and that it has "broader implications" (*Id.* at 889). Such endeavors may have "national or even global implications within a particular field" (*Id.* at 889), "significant potential to employ U.S. workers or [have] other substantial positive economic effects, particularly in an economically depressed area, for instance" (*Id.* at 890), or has the potential to widely advance and broadly affect U.S. strategic interests (*Id.* at 892).

As it relates to the proposed endeavor, the Petitioner indicates he and the proposed endeavor will act as a middle-man, an agent, or a broker to access online coursework offered from American universities. This appears to directly align with the concept of online program managers (OPM). Colleges can use third-party OPMs to help run their online education programs. These managers often recruit students, in addition to providing other services. It is not apparent from the Petitioner's statements in the record how this proposed endeavor will impact the field of online higher education in the United States more broadly or will have the potential to advance and affect U.S. strategic interests by the endeavor serving as a middle-man, an agent, or a broker for American universities.

Within the business plan, the Petitioner explained that he completed a significant amount of his own coursework through online platforms such as [redacted] The Petitioner proposes his endeavor to duplicate these existing online education-bundling offerings. And we further note that colleges and universities already offer online courses. Notably, there appears to be a shift away from OPM for U.S. higher education, similar to the proposed endeavor, as it has come under scrutiny and appears subject to additional government regulations in the near future.[1, 2] It appears the types of services the proposed endeavor would offer may be curtailed. While that certainly does not completely undermine the Petitioner's efforts to implement his proposed endeavor, it does tend to have a diminishing effect on his claim that the endeavor satisfies the national importance requirement here.

Even setting that aside, the Petitioner has not described how his endeavor either differs from similar current offerings, or how it would be of such consequence that it would effect an impact in the broader field of online higher education in the United States. The main discernable difference between the current offering and this endeavor is the Petitioner's plan would be provided through his existing platform, but he does not explain how the use of his platform is likely to result in an impact within the broader industry.

Apart from his online platform already existing, absent from the discussion is why any type of benefit would result from using his platform and what the endeavor's prospective potential impact will be. At best, the Petitioner claims through the business plan that the endeavor "will allow a large number of these [American universities] to reach prospective national and international students, while it will also increase course diversity and availability of formal studies to students across the globe."

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[1] *Higher Education: Education Needs to Strengthen Its Approach to Monitoring Colleges' Arrangements with Online Program Managers*, U.S. Government Accountability Office (May 5, 2022), https://www.gao.gov/products/gao-22-104463.

[2] *Moving Away from OPMs and Enrollment Management Services*, Education Dynamics (Oct. 12, 2023), https://www.educationdynamics.com/transition-opm-unbundled-services-higher-ed/; *Future of OPMs in Flux as Regulations Loom*, Inside Higher Ed (Dec. 13, 2023), https://www.insidehighered.com/news/tech-innovation/2023/12/13/how-education-department-could-change-opm-industry.

This again leaves us asking: But to what effect? The Petitioner does not sufficiently describe the global or national implications of the ease of access to United States higher education to the field of education or the broader implications of ease of access to United States higher education. And absent adequate evidence in the record of its potential prospective impact or positive economic effects, the Petitioner's proposed endeavor has form but lacks in substance. Such a showing might provide a foundation for us to favorably determine whether that potential prospective impact or economic effect rises to a level of national importance as required in *Dhanasar*, 26 I&N Dec. at 893. But again, the Petitioner has not made such a showing here.

Also, the Petitioner does not address how the endeavor will *allow* courses American universities already offer to reach national and international students, or how it will increase the diversity and availability of courses when they are already available to the global public over the internet.

Within the business plan's market analysis, instead of focusing on offerings similar to the proposed endeavor, he focuses on the U.S. e-learning and the general online learning markets, as well as marketing managers in general. The Petitioner did not explain how that market analysis is relevant to the proposed endeavor. And because the U.S. e-learning and the general online learning markets are distinct and not interchangeable with the proposed endeavor, which is essentially a broker for existing online content, he should explain how his market analysis and the endeavor naturally align and he should fill that void with the pertinent information. It is the Petitioner's burden to fill such analytical gaps if he is to demonstrate eligibility under *Dhanasar's* first prong. *Dhanasar*, 26 I&N Dec. at 889 n.8 (concluding a petitioner must establish they more likely than not satisfy the qualifying elements, and citing *Chawathe*, 25 I&N Dec. at 376).

We ultimately agree with the Director that one shortcoming associated with the Petitioner's eligibility lies with the inadequate business plan that lacks information relating to the business to include: the number of employees such an effort will require or the number of staff it will hire; the area where the business will operate and presumably benefit the local economy; actual prospective clients; operating costs, income projections, or a pricing structure for its offerings; and most notably, how the company will generate revenue. An entrepreneur should not offer a business plan lacking in significance, adequacy, or completeness and expect USCIS to perfunctorily deem it sufficient to establish the endeavor potentially will have a broad impact in the field. The mere presence of a business plan does not demonstrate an endeavor has national importance, as such a presentation lacks probative value. Probative evidence is the type that "must tend to prove or disprove an issue that is material to the determination of the case." *Matter of E-F-N-*, 28 I&N Dec. 591, 593 (BIA 2022) (quoting *Matter of Ruzku*, 26 I&N Dec. 731, 733 (BIA 2016)). The business plan does not adequately prove the Petitioner's contentions here.

Within the appeal, the Petitioner recalls that in his response to the Director's request for evidence, he indicated his endeavor "will enhance societal welfare, has the potential to impact a matter that is the subject of national initiatives," and has the potential to employ U.S. workers. We note that having the potential to impact a matter relating to national initiatives is inadequate. The Petitioner should demonstrate how one digital marketing specialist with his own enterprise will produce an impact rising to the level of national importance, result in *substantial* positive economic impacts, or broadly enhance individual and societal welfare.

Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to the Petitioner's specific proposed endeavor, the record does not reflect the benefits to the U.S. regional or national economy resulting from his work as a digital marketing specialist with his own enterprise providing services to clients would reach the level of substantial positive economic effects contemplated by *Dhanasar*. *Id.* at 890. Merely working in an important field is insufficient to establish a proposed endeavor's national importance.

Supporting his appellate claims that the proposed endeavor will enhance societal welfare, the Petitioner identifies an opinion letter from [redacted] an assistant professor at [redacted] Professor [redacted] stated that professionals like the Petitioner helped small and medium businesses increase sales and profitability, retain customers, create brand and product awareness, and overcome challenges prevalent in the market. Professor [redacted] concluded that the Petitioner's proposed endeavor would contribute to the U.S. economy beyond his clients by helping small and medium sized businesses thrive in the market and create job opportunities, and by expanding the tax base. It is unclear how the professor made such an assessment when the business plan for the proposed endeavor has significant flaws as both the Director and we noted in our respective decisions. Although we agree that in some instances substantial positive economic effects or impacts could enhance societal welfare, we reiterate that here, the Petitioner has not made such a showing and we are not persuaded by this appellate argument.

Next, the Petitioner moves to argue that his proposed endeavor "has the potential to impact a matter that is the subject of national initiatives." The only explanation the Petitioner offers for this assertion is that the "endeavor is aligned with the U.S. government's initiatives in improving outcomes for students through the use of technology. In 2019, the Department of Education launched the Reimagining Higher Education Ecosystem Challenge, which seeks to promote innovation in higher education through the use of technology." First, the Petitioner's explanation of this claim is limited and he offers no additional information in support of his assertion, which falls short of meeting his burden of proof. The Petitioner cannot offer such an attenuated statement and expect us to put flesh on its bones. We are not required to offer full analysis of such an inadequate argument in this decision. *See Al-Tamimi v. Adelson*, 916 F.3d 1, 6 (D.C. Cir. 2019) (finding when counsel mentions an argument in the most skeletal way, leaving the appellate body to do their work and to create the framework for the argument, this is tantamount to failing to raise the argument in the first place); *Trump v. Thompson*, 20 F.4th 10, 46 (D.C. Cir. 2021), *cert. denied,* 142 S. Ct. 1350 (2022) (quoting *Maloney v. Murphy*, 984 F.3d 50, 68 (D.C. Cir. 2020)).

Despite that shortcoming, simple alignment or shared common aspects with government initiatives are not sufficient to meet the first prong's national importance requirements. In focusing on the government initiative's goal of increasing the use of technology to promote higher education, the Petitioner has not established the endeavor will substantially benefit and impact the field of online higher education in the United States more broadly. This misplaced focus does not address the *Dhanasar* decision's national importance requirements, nor does it adequately tie the Petitioner's endeavor to those improvements within the field. *Dhanasar*, 26 I&N Dec. at 893.

Merely adding to the online higher education options that are already available doesn't establish the potential prospective impact of his work more broadly to the field will be anything more than a nominal expansion. In its present form, this is comparable to the foreign national's teaching activities

in the *Dhanasar* decision that did not rise to the level of having national importance because they would not "impact the field of [science, technology, engineering, and math] education more broadly." *Id.* The evidence does not suggest that the Petitioner's consulting services business would impact the field of online higher education in the United States more broadly.

Then, the Petitioner turns to the proposed endeavor's potential to employ U.S. workers. He appears to employ circular logic stating he intends to use his existing platform to enable formal online education, which will offer students from around the world with easy access to American university coursework. He closes this circuitous argument stating: "This will directly establish an ever-growing base of students for American universities across the board. More educated students result in more jobs, which in turn leads to positive economic effects." As the Director pointed out, the Petitioner's petition is devoid of even the slightest hint about the number, type, and location of any employment creation that would result from his proposed endeavor. Even on appeal, the Petitioner does not contest this conclusion within the Director's decision, and he does not offer information relating to the business's need for employees. Because he failed to specify where he would establish this endeavor in the United States, the possibility remains that he would simply continue the bulk of the proposed endeavor's operations from outside the country where his current platform is stationed.

Finally, the Petitioner identifies "industry reports, articles, and government initiatives that corroborate the specific implications of these employment activities." But the Petitioner doesn't state what employment activities he is referencing in the appeal brief. We are unsure if he is referring to the broader U.S. e-learning market, the general online learning market, focusing generally on marketing managers, or if he means his specific planned endeavor. If he means the broader markets and marketing managers, that focus is misplaced as he has not established a sufficient nexus between the endeavor and employment in those expansive markets. But if he means his proposed endeavor, he did not identify any industry reports, articles, or government initiatives that discuss his specific endeavor.

The Petitioner highlights that there is a high demand and need for individuals performing work similar to that described in his proposed endeavor, discusses the value and importance of the proposed endeavor, and takes note of his background and personal and professional attributes. Even if we consider these aspects collectively, they do not establish that the specific proposed endeavor is more likely than not to impact the broader field of online higher education in the United States, or that it otherwise has implications rising to the level of national importance.

B. Whether on Balance a Waiver is Beneficial

On appeal, the Petitioner asserts he meets additional eligibility requirements under the *Dhanasar* analytical framework, but he has not satisfied *Dhanasar's* necessary first prong. Because this shortcoming is dispositive of the appeal, we reserve our opinion regarding the remaining issues. Where a case warrants a denial regardless of other eligibility considerations, it is unnecessary that we address those other considerations. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

## III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.