U.S. Citizenship and Immigration Services

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

In Re: 31673129

Date: JUN. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial services entrepreneur seeking to operate a transportation enterprise, seeks an EB-2 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 EB-2 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 the Petitioner's proposed endeavor had prospective national importance. The Director also determined that a waiver of the required job offer and labor certification would not 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 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

> substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.*

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is

[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).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

## II. ANALYSIS

The Director found the Petitioner qualified for underlying EB-2 visa classification as a member of the professions holding an advanced degree. However, the Director determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification from a U.S. employer. Specifically, the Director concluded that the national importance of the endeavor had not been demonstrated under prong one, and that the Petitioner had not shown that a waiver of the job offer requirement would be beneficial as required by prong three.

On appeal, the Petitioner argues that the proposed endeavor has both substantial merit and national importance and he therefore has satisfied prong one of the *Dhanasar* framework. The Petitioner contends that the Director erred by failing to consider the comprehensive evidence provided demonstrating the potential impact of the endeavor in an economically depressed community. The Petitioner highlights the market analysis included with the waiver request, and notes that the proposed endeavor will assist smaller transportation companies to operate with quality and safety standards comparable to large companies. Although the proposed endeavor will initiate in [redacted] Florida, the Petitioner stresses that this geographical focus is not fatal to the claim, as the endeavor will nonetheless create direct job opportunities and economic ripple effects of national importance. The Petitioner underscores his lengthy work experience, significant business management knowledge, and complete understanding of entrepreneurial ventures. He notes that the record also displays the progress to date in achieving the goals of the proposed endeavor as demonstrated by multiple letters from potential investors, clients, and partners. The Petitioner contends that the Director erred in determining that market needs in the United States are not compatible with the proposed business plan and stresses that the professional project "is more likely than not to succeed."

With respect to the third prong, the Petitioner contends that the waiver of the job offer requirement would be beneficial to the United States given his rare skill set, extensive experience, and potential to expand a sector of the American economy. He also highlights that his plan to operate as a self-employed professional would not adversely impact U.S. workers.

The Petitioner resubmits evidence previously brought before the Director, including a professional plan and statement; a business plan; articles of incorporation for the transportation company; various letters including an expert opinion letter, references, and letters detailing the intent to work with the Petitioner; market research; news articles detailing the contributions of immigrant-owned businesses; information on small business ventures; details of Florida's job creation outlook; and information on economic outlooks and development in [redacted] The Director reviewed, and our decision incorporates, additional documentation including information on the auto towing and wholesaling industries, opportunity development zones within [redacted] additional documentation relating to the proposed venture, and additional articles discussing the economic

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

impacts of immigrant-owned businesses, in particular businesses owned by Latinos or Brazilian nationals.

The Petitioner has not satisfied the first prong of the *Dhanasar* framework requiring a proposed endeavor to be of national importance. Although the Petitioner stresses that the proposed endeavor has progressed, is likely to be successful, and will create employment opportunities, these factors are not sufficient to show national importance. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to provide valuable services for his clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of 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, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clientele to impact the automobile or cargo transportation field, the financial services industry, or economic initiatives more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects. Specifically, he has not shown that his company's future staffing levels, business activity, associated tax revenue, and financial initiatives stand to provide substantial economic benefits in Florida or the United States. While the business plan indicates that the company has growth potential, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his company will hire U.S. employees and that the [redacted] area is economically distressed, he has not offered sufficient evidence that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. Moreover, while the Petitioner contends that his proposed endeavor has the potential to expand beyond the Florida market, he has not shown that the prospective impact of the business services performed by his company would represent a significant share of the automobile or cargo transportation industry or the financial services market. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

We have considered the Petitioner's argument that the Director incorrectly found the business plan to not be compatible with market needs. However, a proposed endeavor must do more than generally fill a market need; as detailed above, the endeavor must bring a broader prospective impact to the field or to the national economy. We have also reviewed the submitted evidence documenting the Petitioner's work experience, education, training, and business background. While these characteristics tend to show the Petitioner's ability to carry out the proposed endeavor, they do not assist in determining that the endeavor is itself of national importance under the first prong of the *Dhanasar* analysis.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve opinion on whether the Petitioner could

satisfy the second and third prongs to qualify for a national interest waiver. 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 the applicant did not otherwise meet their burden of proof).

## III. CONCLUSION

The Petitioner has not shown that his proposed endeavor is of national importance. Because he has not met the first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.