U.S. Citizenship and Immigration Services

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

In Re: 37189970

Date: MAR. 25, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a general and operation manager, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 that the Petitioner qualified for EB-2 visa classification. The Director further concluded the record did not support a finding 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 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

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,[2] 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 Petitioner claims he intends to come to the United States and work as a general and operation manager in the paint manufacturing field. The Petitioner asserts that he is eligible for the EB-2 classification as an individual of exceptional ability. Specifically, he states that over the course of his 25-plus-year career in the paint manufacturing business, he has "demonstrated [his] ability to implement efficient processes, enhance operational productivity, and lead companies to success." He claims his proposed endeavor is to begin a consulting and training company to "be a candidate to occupy leadership positions in the General and Operation sector of American companies, as well as act autonomously in the consulting and advisory area." He claims that the endeavor "aims to provide advanced consulting and training services to the U.S. paint manufacturing and packaging services," which he argues "aligns with national interests, promoting job creation, industrial productivity, technological innovation, and economic growth." He argues on appeal that "by focusing on enhancing operation efficiency, safety, and sustainability across industries, the proposed venture has the potential to create a ripple effect of economic benefits." The Petitioner contends his professional background gives him the necessary experience to succeed in this endeavor.

To qualify for a national interest waiver, the Petitioner must first show that he qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act, either as an advanced degree professional or an individual of exceptional ability. The Director denied the petition, in part, determining that the Petitioner did not meet the EB-2 classification as an advanced degree professional or an individual of exceptional ability. The Director further determined that although the Petitioner established the substantial merit of his proposed endeavor, he did not establish its national importance, that he is well-positioned to advance that proposed endeavor, or that it would be beneficial to the United States to

[2] *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).

waive the requirements of a job offer. We agree that the Petitioner has not established that his proposed endeavor has national importance and will dismiss the appeal accordingly.[3]

The Director found that the Petitioner did not establish that his proposed endeavor met the national importance element of the first prong of the *Dhanasar* framework. Specifically, the Director determined the Petitioner did not establish his proposed endeavor would have broader implications to the field of industrial manufacturing or have significant potential to employ U.S. workers or otherwise have substantial positive economic effects such that he established its national importance. The first prong of *Dhanasar*, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. 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.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The evidence submitted by the Petitioner does not establish his proposed endeavor would operate on such a large scale as to have a national impact on the paint and packaging manufacturing industries. When determining the national importance of a proposed endeavor, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; rather, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* 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.* Although the Petitioner has provided evidence of his professional experience, including his resume and letters of reference, the inquiry in the first prong of the *Dhanasar* framework focuses on "the specific endeavor that the foreign national proposes to undertake." *See id.* The Petitioner's skills, knowledge, and prior work in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong. The Petitioner emphasizes on appeal that the proposed endeavor aligns with national priorities, including "government initiatives focused on sustainability, technological innovation, and economic development, including the Advanced Manufacturing Partnership (AMP)." While we acknowledge the importance of industrial manufacturing, the Petitioner did not establish his proposed endeavor would have broader implications to the overall field or otherwise operate on such a scale as to rise to a level of national importance. *See id.* at 893. Although the Petitioner's specific venture has the potential to provide valuable services to his clients, he did not establish his specific proposed endeavor will have substantial national implications or have a broader impact beyond the individuals directly served by his company.

Further, the record does not establish the Petitioner's proposed endeavor will have substantial positive impacts on the U.S. economy. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would rise to the level of national importance. An endeavor may have national importance if it "has significant potential to employ U.S. workers or has other

[3] As the Petitioner has not overcome the Director's determination that the record did not establish a waiver of the required job offer, and thus of the labor certification, would be in the national interest, we need not address whether he is eligible for the EB-2 classification as an advanced degree professional or an individual of exceptional ability.

substantial positive economic effects, particularly in an economically depressed area . . .." *Id.* at 890. The Petitioner seeks to come to the United States to establish a management and training solutions company that would largely serve businesses in the industrial manufacturing field. He asserts that his business will generate jobs for U.S. workers and positively contribute to the U.S. economy. In his business plan, the Petitioner indicated his company would generate a cumulative 21 jobs and $6.285 million dollars in revenue by its fifth year of business. However, the business plan does not provide sufficient explanation for the basis of these projections. Further, even if sufficient basis were provided for the proposed endeavor's revenue and job creation projections, the Petitioner has not explained how his proposed employment metrics and revenue would have impact beyond his business's area of intended operations. The Petitioner also has not established that his proposed endeavor stands to promote job creation and significantly reduce a national labor shortage in industrial manufacturing as claimed. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. Upon de novo review, the Petitioner did not establish his proposed endeavor would have substantial positive economic effects.

Accordingly, we find that the record does not demonstrate national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, and the Petitioner has not demonstrated eligibility for a national interest waiver. As 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 "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

As the Petitioner has not established he meets the requisite first prong of the *Dhanasar* analytical framework, we conclude that they have not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.