U.S. Citizenship and Immigration Services

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

In Re: 34194792

Date: OCT. 4, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 EB-2 classification.[1] *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 and dismissed two subsequent motions, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he had not established 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.

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

"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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] 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 a degree of expertise significantly above that ordinarily encountered in the field.

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."

[1] The Petitioner did not claim eligibility as a member of the professions holding an advanced degree.

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in determining eligibility for exceptional ability classification. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

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,[3] 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.

## II. ANALYSIS

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *See Dhanasar*, 26 I&N Dec. at 889-90. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner indicated that he intends to work as an entrepreneur providing "swimming pool installation services, by initially establishing [redacted] an [redacted]-based company that will provide management, installation, and automation services." He further stated:

> [redacted] will provide customized work to clients initially in the [redacted] FL area, offering high end swimming fiberglass pool installation and automation services…. The Company will be committed to ensuring that customers enjoy the pools the Company installs and that they are not source of stress or unnecessary expense.
>
> Due to [the Petitioner's] industry-specific management experience, [the Petitioner] will effectively manage the U.S. Company, allowing his subordinates to focus on providing superior client care and staying up-to-date with industry changes and trends.

The Petitioner's initial business plan (May 2021) for [redacted] includes industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company will employ three personnel in year one, four in year two, and five in years three through five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while his plan offers revenue projections of $1,800,000 in year one, $2,520,000 in year two, $2,880,000 in year three, $3,240,000 in year four, and $4,320,000 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.[4]

[3] *See also 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).

[4] In response to the Director's request for evidence, the Petitioner provided a second business plan for [redacted]

The Petitioner submitted Biden Administration Executive Orders on "Tackling the Climate Crisis at Home and Abroad" and "Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans," a U.S. Environmental Protection Agency "Chemical Emergency Preparedness and Prevention Advisory" relating to "Swimming Pool Chemicals: Chlorine," and a "Critical and Emerging Technologies List Update." The record also includes information about Biden Administration initiatives to strengthen U.S. leadership in tackling climate change, to set a "Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies," and to establish Federal policies for energy and sustainability management. In addition, the Petitioner provided articles discussing "Renewable Pool Heating," "Pool Water Efficiency," the United States decision to rejoin the Paris Agreement, "Accomplishments under President Biden's Federal Sustainability Plan," and swimming pool energy usage and a new design aimed at reducing energy consumption.

We agree with the Petitioner that the above documents as well as other corroborating evidence in the record establish his endeavor has substantial merit. In determining national importance, however, the relevant question is not the overall importance of the field or industry in which the individual will work, the general benefits of fostering innovation and sustainability, or the value of immigrant entrepreneurship; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor.

The Petitioner also offered letters of support from L-O-, G-D-R-S-, P-E-D-, R-F-G-S-, and M-C-S- discussing his technical capabilities and experience with control systems for electrical equipment. In addition, he provided a letter from L-F- reflecting interest in his company's services. The Petitioner's skills, knowledge, and prior work in his field, as well as interest from a potential customer, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

In addition, the Petitioner presented "Expert Opinion Letters" from A-A-, Adjunct Professor of Mathematics at [redacted] D-P-, Associate Professor in Biomedical Industrial and Systems Engineering at [redacted] and M-A-A-, Professor of Manufacturing Engineering at [redacted] in support of his national interest waiver. A-A-, D-P, and M-A-A- contend that the Petitioner's proposed endeavor is of national importance because his generic occupation of electronics technician, the industry in which he plans to work, and immigrant entrepreneurship stand to contribute to our nation's economy, the industrial and electrical fields,

[redacted] dated March 2023. As the Petitioner's second business plan materialized after the filing of the petition, and therefore would not establish his eligibility at the time of filing, it does not assist him in establishing that he meets the requirements set forth in the *Dhanasar* framework. The petition in this matter was filed on December 1, 2022, and the Petitioner has the burden of proof to establish eligibility for the requested benefit at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts"). Further, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

societal welfare, government initiatives, public health, and environmental sustainability. The issue here, however, is not the national importance of the field, industry, or profession in which the individual will work or the value of immigrant entrepreneurship in general; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. While the advisory opinions cite to publicly available information from IBISWorld, U.S. Bureau of Labor Statistics, U.S. Small Business Administration, Massachusetts Institute of Technology, Market Data Forecast, the White House, Statista, U.S. Environmental Protection Agency, and the Solar Foundation to establish the importance of the Petitioner's work, they have not demonstrated how performing day-to-management of [redacted] pool installation and automation services as contemplated by his proposed endeavor rises to a level of national importance. The letters from A-A-, D-P, and M-A-A- do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not demonstrated his undertaking would impact his "field more broadly" rather than mainly benefiting his company or its clients. The Director also concluded the Petitioner had not shown that his proposed endeavor offers sufficient "potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation."

In his appeal brief, the Petitioner contends that "the Director modified the plain language of the example set forth in *Matter of Dhanasar* in an attempt to demonstrate that the Petitioner's proposed endeavor does not hold national importance." For example, the Petitioner takes issue with the Director's statement that the Petitioner had "not shown that the particular work he proposes to undertake offers innovations that contribute to advancements throughout the industry." The Petitioner's brief, however, omits the remaining part of the sentence from the Director's decision, which further indicated ". . . or otherwise has broader implications in the field." Because the Director was simply identifying the types of evidence that may qualify under *Dhanasar's* first prong and qualified the statement with "or otherwise has broader implications in the field," we find no error in the Director's statement on this issue. Nor do we agree with the Petitioner's argument that the Director's reference to "substantial positive economic *benefit*" [emphasis added] rather than "substantial positive economic effects" (as indicated in *Dhanasar*) represents a significant error that undermines the Director's decision.

In addition, the Petitioner argues that "[h]is goal is to expand into other sectors of the economy with a focus on sustainability, addressing the need for sustainable solutions in society." He claims that his proposed endeavor offers "potential for significant positive economic effects, including job creation and technological innovation." The Petitioner further contends that his undertaking represents "a clear path to providing automation and technical services, contributing to the overall U.S. economy." The Petitioner, however, has not provided evidence demonstrating that his proposed pool installation and automation services business would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how

the potential prospective impact of his proposed endeavor stands to offer broader implications in his field or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States.

The Petitioner also claims that his proposed endeavor will "address the critical shortage of skilled electronics technicians in the U.S.," but he does not point to evidence to corroborate his assertion. We are not persuaded by the argument that the Petitioner's proposed endeavor has national importance due to the shortage of workers in his field. Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Furthermore, the Petitioner contends that his proposed endeavor is aligned "with government policies regarding the reduction of greenhouse gas emissions and advancements of autonomous technology as established by the National Critical and Emerging Technologies List." Additionally, he cites to White House directives aimed at fostering "innovation and sustainability in various industries," but he has not demonstrated how operating a swimming pool installation services company as contemplated by his specific proposed endeavor rises to a level of national importance on these issues. In *Dhanasar*, we 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.

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. While the Petitioner's statements reflect his intention to provide pool installation and automation services to his company's future 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 conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field or industry, societal welfare, government initiatives aimed at fostering technology and sustainability, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his endeavor stands to generate jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers Florida or the United States a substantial economic benefit through employment levels or business activity.

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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. We also reserve a determination on the Petitioner's eligibility for the underlying immigrant classification as an individual of exceptional ability. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has 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, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.