U.S. Citizenship and Immigration Services

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

In Re: 34286195

Date: OCT. 23, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a civil engineer and construction manager, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional or a person of exceptional ability, as well as a discretionary national interest waiver of the job offer requirement attached to this classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner qualifies for the EB-2 classification as an advanced degree professional, the record did not establish that a waiver of the required job offer, and thus labor certification, would be in the national interest. This matter is now before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner bears the burden of establishing his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

## I. LAW

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant 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, which states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts in holding that USCIS' decision on a national interest waiver is discretionary in nature).

## II. ANALYSIS

The Director found, and the record—including the Petitioner's 2011 bachelor of engineering degree from Pakistan, school transcript, and academic evaluation as well as former employer letters—shows, that he qualifies for the underlying EB-2 classification as an advanced degree professional based on his U.S.-equivalent bachelor's degree and at least five years of progressive post-degree experience in the specialty. 8 C.F.R. §§ 204.5(k)(1)-(2), (k)(3)(i)(B).

The remaining issue on appeal is whether he warrants a discretionary national interest waiver under the *Dhanasar* framework and its requisite three prongs, any one of which is dispositive. The Director first noted that the Petitioner's vaguely defined proposed endeavor impedes *Dhanasar* evaluation. Considering the overall evidence, including his assertions below and on appeal, we conclude that the proposed endeavor is sufficiently detailed to form a basis for review under the *Dhanasar* framework.[2]

The Director ultimately found that although the proposed endeavor has substantial merit, the record did not show it has national importance and thus the Petitioner did not meet *Dhanasar*'s first prong.[3] On appeal, he does not identify specifically any factual or legal error in the Director's denial, but reiterates his eligibility for a discretionary national interest waiver. We conclude that the evidence does not establish that the proposed endeavor has national importance as contemplated by *Dhanasar*.

Under the *Dhanasar* framework, the first prong, "substantial merit" and "national importance," focuses on the specific endeavor the Petitioner proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit under this prong may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In assessing whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id*.

The Petitioner intends to continue to work as a civil engineer and construction manager in this country. He plans to develop and implement innovative technologies and construction methods, including in disaster-resilient and durable infrastructure fields, and use new materials he claims will enhance efficiency and reduce construction waste in an environmentally safe and sustainable manner.

Although the proposed endeavor as a civil engineer and construction manager with research interest in infrastructure construction subfields has merit, the evidence does not show it would have significant potential to employ U.S. workers, have substantial positive economic impact in this country, broadly impact the industry on national or global level beyond his potential employer and customers, or otherwise have broader economic or societal implications rising to the level of national importance.

In determining whether the proposed endeavor has national importance, we consider and look for evidence of the endeavor's potential prospective impact. *Id*. In reasserting that his proposed endeavor has national importance, the Petitioner relies on his academic credentials and past experience as a civil and engineer and construction manager in Pakistan as indicated in his resume, personal statements, various support letters, and general industry information he references in his statements noting the industry's significance. He further reiterates that, given his background and expertise, which he claims

[2] We do not further address the issue of specificity of the proposed endeavor here as *Dhanasar*'s national importance prong is dispositive of this appeal, as discussed below.

[3] The Director further determined that the evidence also did not satisfy *Dhanasar*'s second and third prongs.

qualifies him for employment as a civil engineer and construction manager, and the industry's high demand for experienced individuals, his proposed endeavor will have substantial positive economic and societal impact. But the above evidence and assertions focus on his skills and profession, which relate to *Dhanasar*'s second prong and pertain to whether he is well positioned for his endeavor and "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890.

For assessing the national importance of a proposed endeavor under *Dhanasar*'s first prong, we look to its "potential prospective impact" and evaluate whether the specific endeavor he proposes to undertake has broader national significance, rather than the importance of his profession or industry in which he proposes to engage. *Id.* at 889. Here, as a civil engineer and construction manager, he proposes to develop and implement innovative methods using new materials and technologies that he claims will enhance construction efficiency, decrease waste, and improve infrastructure quality and safety in an environmentally sustainable manner. However, the Petitioner does not claim, and the record does not contain any evidence, that he himself developed or will develop new materials and technologies that will broadly impact the industry in the United States. Further, the record does not contain any evidence that his claimed "innovative construction methods" he may have acquired in Pakistan were or would be recognized or adopted by the industry here or otherwise have far-reaching implications. Although we acknowledge that the proposed endeavor could have a positive impact on his career, he has not persuasively explained, and the record (primarily including his assertions, recommendation letters, "appreciation" letters, and the general industry information) does not show how his proposed work as a civil engineer and construction manager would have the national or global implications for the U.S. industry as he claims, beyond his potential employer and clients.

The record, for instance, lacks detail and probative evidence on the claimed economic impact and hiring potential, such as financial or employment projections, directly attributable to the proposed endeavor. Apart from generally stating that he "can immediately and significantly contribute to the US employment market," he does not specifically claim he himself will employee U.S. workers or that his position with a future company will result in hiring of U.S. workers. Further, he does not specify, and the record lacks independent evidence as to, how his proposed work otherwise stands to impact U.S. economy or benefit economically depressed areas. *Dhanasar*, 26 I&N Dec. at 890 (holding that proposed endeavors with "significant potential to employ U.S. workers" or "substantial positive economic effects, particularly in an economically depressed area" may indicate national importance). Other than the general assertions that "construction and infrastructure projects remain necessary in all economic conditions" and that he plans to "empower" unspecified "underserved communities" by focusing on vital projects such as "clean water, sanitation facilities, or safe and secure housing," the record lacks evidence of any interest from any individual or company in his proposed endeavor and how he will specifically facilitate and elevate the significance of his proposed work to a national level. Further, he does not delineate his future research and development goals and how he will be able to achieve these goals. He nonetheless asserts on appeal that his endeavor would address national and even global infrastructure needs and act "as a catalyst for economic growth" by "championing innovative construction practices and technologies." As explained, however, the record lacks detailed, objective evidence as to how he will achieve the stated goals he claims would have significant benefits. The aspirational assertions based on his background, support letters, and industry information thus do not demonstrate his proposed endeavor would have "significant potential to employ U.S. workers" or "substantial positive economic effects, particularly in an economically depressed area." *Id.*

He continues to rely on his professional qualifications and the importance of the construction industry. But as noted, the importance of a proposed endeavor is determined by its potential prospective impact, not by the industry or occupation it involves. *Dhanasar*, 26 I&N Dec. at 889-890. The purpose of the national interest waiver therefore is not to facilitate a U.S. job search where there may be job demands. Anyone seeking this waiver must establish that "the specific endeavor" they propose to undertake has national importance. *Id.* Although he also states that, in addition to seeking work in this country, he will "train others," he does not provide any detail or evidence as to the educational aspect of his endeavor and its related potential impact. *Id.* at 893 (holding that the petitioner's work as a science teacher, while found to have merit, did not qualify him under *Dhanasar*'s first prong because the evidence did not establish such work would impact science education more broadly).

While we acknowledge his desire to contribute to the U.S. construction industry and its economy, the Petitioner has not established with specific, probative evidence that his proposed endeavor will have broader implications in his field, have significant potential to employ U.S. workers, or have substantial economic or societal effects beyond his future employer and clients. He has not met *Dhanasar*'s national importance prong and thus has not established his eligibility for a national interest waiver. *Matter of Chawathe*, 25 I&N Dec. at 375-76 (stating that petitioners bear the burden of establishing eligibility, and under this standard we consider the quality, such as relevance and probative value, of the evidence, in addition to quantity); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).[4]

As the identified ground for denial, the Petitioner's inability to satisfy *Dhanasar*'s first prong is dispositive of this appeal, we do not address here the Director's determinations as to the second and third *Dhanasar* prongs for a national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to reach issues that are unnecessary to the ultimate decision).

**ORDER**: The appeal is dismissed.

[4] The Petitioner submits additional recommendation and "appreciation" letters and other documents pertaining to his past experience in Pakistan. However, the Director's request for evidence specifically notified him of the evidentiary deficiency and provided him an opportunity to supplement the record. He also submitted below similar support letters and work related documents. We thus decline to consider the new appeal documents. 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence on appeal where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it before the denial). Even if we were to consider the new documents, they do not specifically pertain to the claimed national importance of the proposed endeavor, and he does not persuasively explain their relevance.