



**U.S. Citizenship
and Immigration
Services**

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

In Re: 28424866

Date: OCT. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a pest control entrepreneur, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies for the EB-2 classification as an advanced degree professional but that the record did not establish that a waiver of the job offer requirement is in the national interest. The matter is now before us on appeal. 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 immigrant 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 classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

¹ *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

- 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

As stated above, the Director determined that the Petitioner qualifies as an advanced degree professional. The Director based this conclusion upon the Petitioner's bachelor's degree in biological sciences from Brazil and his work experience. *See* 8 C.F.R. § 204.5(k)(2) (an individual who possesses a United States bachelor's degree or the foreign equivalent degree followed by at least five years of progressive experience in the specialty will qualify as an advanced degree professional). However, upon review of the record, we do not agree that the Petitioner has provided sufficient evidence to establish that he possesses at least five years of progressive work experience in the specialty. The Petitioner submitted evidence relating to the operation of a pest control management business in Brazil, including a letter from his accountant stating that he was a biologist and business owner at the company from 2008 to 2020 and various certificates from the [REDACTED] Council of Biology in Brazil regarding the good standing of the company and its ability to operate in the pest control field. The Petitioner also submitted "certificates of professional responsibility" from the [REDACTED] Council of Biology that appear to be summaries of work agreements that the company executed with clients. Although these documents help establish the existence and operation of this company in Brazil, they do not describe the Petitioner's own job duties and experience. The Petitioner would need to address this deficiency in any future proceedings where attainment of work experience is required to establish eligibility. *See* 8 C.F.R. § 204.5(k)(3)(i)(B); *see also* 8 C.F.R. § 204.5(g)(1).

We turn now to the Petitioner's request for a waiver of the job offer requirement in the national interest. The Petitioner proposes to establish and operate an integrated pest control management business in the state of Florida. The Petitioner states that integrated pest control is an ecosystem-based strategy that focuses on long-term prevention of pests through techniques such as biological control, habitat manipulation, modification of cultural practices, and limited pesticide use to minimize risk to human health and the environment. The Director determined that the Petitioner established the substantial merit of his proposed endeavor and that he is well-positioned to advance it. However, the Director found that the Petitioner did not establish the national importance of the endeavor nor that, on balance, waiving the job offer requirement would benefit the United States.

As to the national importance of the endeavor, the Director found that although the Petitioner's business plan helped establish the possible financial, marketing, and business makeup of the proposed endeavor, it did not demonstrate the importance of endeavor to the United States. The Director determined that the Petitioner did not submit sufficient evidence to establish that the proposed endeavor stands to sufficiently extend beyond the organization and its clients to impact the industry or field more broadly. The Director also found that the Petitioner did not establish the significant potential for positive economic effects based upon his business plan. Finally, the Director concluded that the articles in the record provided background on pest control and the importance of the industry overall, but none of them attested to importance of the Petitioner's specific endeavor of operating a pest control management business in Florida.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Id.* at 890.

On appeal, the Petitioner submits a brief in which he asserts that he has established eligibility for a national interest waiver. The Petitioner's appeal brief restates many of the claims made in his response to the Director's request for evidence (RFE). The Petitioner asserts that Florida's climate and its projected population growth demonstrate the need for integrated pest control management. The Petitioner also asserts that his endeavor will broadly enhance societal welfare and in support cites to studies and publications related to the pest control industry, the link between pests and communicable diseases, and the population growth in Florida. The Petitioner also discusses on appeal guidance from the USCIS Policy Manual related to special evidentiary considerations for national interest waiver petitions involving entrepreneurs and individuals with advanced degrees in science, technology, engineering, or mathematics (STEM) fields.

We conclude that neither the Petitioner's appellate arguments nor the evidence in the record establish the national importance of the proposed endeavor. Although the Petitioner references the USCIS Policy Manual's guidance on entrepreneurs and individuals with advanced STEM degrees, the Petitioner does not explain how this guidance establishes the national importance of his proposed endeavor. The guidance related to individuals with advanced STEM degrees states that USCIS recognizes the importance of progress in STEM fields and the essential role of individuals with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies, national security, or other STEM areas important to U.S. competitiveness. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policy-manual>. However, the Petitioner does not demonstrate on appeal that his proposed endeavor in integrated pest control management relates to or has the potential to result in progress for a critical and emerging technology or national security, nor has the Petitioner demonstrated that the proposed endeavor aims to advance a STEM technology or STEM research. Although the Petitioner's degree is in a STEM field, the Petitioner has not established that his proposed endeavor has the potential for a broad impact in that field.

The guidance related to entrepreneurs seeking national interest waivers acknowledges that there may be unique aspects to the evidence submitted by entrepreneurial petitioners and discusses some of these types of evidence. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(4). While the Petitioner describes his proposed endeavor as an entrepreneurial effort, he does not explain how this guidance helps establish that his proposed endeavor has national importance. Moreover, the record lacks many of the specific types of evidence that the guidance states may be relevant in entrepreneurial petitions, such as outside investments, incubator or accelerator participation, published materials about the Petitioner, intellectual property, and awards or grants. *Id.*

The Petitioner's claims related to Florida's climate, its population growth, and the connection between human health and pest control are essentially the same claims made in response to the RFE and do not establish error in the Director's decision. Moreover, the additional sources that the Petitioner cites to on appeal are substantially like the evidence already in the record and do not help establish the national

importance of the Petitioner's specific proposed endeavor. These claims all relate to the pest control industry overall, and we agree with the Director that, in determining national importance, the relevant consideration is the "specific endeavor that the [noncitizen] proposes to undertake," rather than the importance of the industry, field, or profession. *See Matter of Dhanasar*, 26 I&N Dec. at 889.

In *Matter of Dhanasar*, we concluded that teaching has substantial merit in relation to U.S. educational interests, but that the petitioner had not demonstrated that the activities of one individual teacher would impact the education field more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. The same is true here. While pest control management may have substantial merit in relation to enhancing societal welfare, the Petitioner has not established that the benefits of his proposed pest control company will extend beyond his own customers and employees to impact the industry more broadly.

The Petitioner has not established that his proposed endeavor has national importance, as required by the first prong of the *Dhanasar* analytical framework. Because the Petitioner has not met the requisite first *Dhanasar* prong, we conclude that the Petitioner has not established that he is eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second and third *Dhanasar* prongs. *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 is otherwise ineligible).

III. CONCLUSION

Because the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.