



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

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

In Re: 21798932

Date: AUG. 10, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a general and operations manager, seeks second preference immigrant classification 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 Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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. –
 - (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.

(B) Waiver of job offer –

- (i) National interest waiver. . . . the 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 (AAO 2016).¹ *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen’s proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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 noncitizen. 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 noncitizen’s qualifications or the proposed endeavor, it would be impractical either for the noncitizen 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 noncitizen’s contributions; and whether the national interest in the noncitizen’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together,

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep’t of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

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 that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the proposed endeavor as a plan “to continue working as a [g]eneral and [o]perations [m]anager, to advise U.S. companies on how to properly plan, direct, and coordinate the operations of public or private sector organizations.” The Petitioner further stated that the endeavor would entail the following:

- Provide strategic business operations, financial, marketing, business-to-business, human resources, procurement and strategic management;
- Planning and making financial accounting forecasts, analyses, statements and reports;
- Creating and overseeing marketing, advertising, and promotion programs;
- Negotiating contracts with vendors and clients;
- Direct and coordinate activities of businesses or departments concerned with the pricing, sales, marketing, procurement and products and services;
- Monitor sales and costs and the use of financial assets to ensure that companies efficiently and effectively provide needed goods or services within budgetary limits;
- Ensure monetary success and company growth through effective management of daily operations; and
- Generate U.S. tax revenue and create American jobs.

In response to the Director’s request for evidence (RFE), the Petitioner modified her proposed endeavor as follows:

My proposed endeavor in the United States will provide a one-stop solution for transporting freight with highly qualified personnel dedicated to maintaining prompt and reliable services at competitive rates. Moreover, I will promote my proposed endeavor through my company, [REDACTED] an American-based start-up company in the international logistic industry with the vision to facilitate goods purchased in the United States to ship anywhere in the globe.

The Petitioner further stated that her endeavor would entail the following:

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

- Conduct accurate shipping documentation research to improve practices and client satisfaction;
- Penetrate the market in the business of operating a freight transportation and logistics company;
- Develop employee capabilities to ensure a strong foundation for participation in a rapidly growing company;
- Increase sales and revenue at a rate no less than 10% each year;
- Stay up-to-date on freight transportation research to improve practices and customer satisfaction;
- Offer premium [f]reight [m]anagement [s]ervices through quality management, quick delivery services, and innovative technology with the ability to adapt [sic] the objectives of our clients as our own;
- Offer superior quality cargo handling and management services that include truck hiring, transportation, freight documentation, customs clearance, warehousing, storage, and hauling services at competitive prices;
- Job creation through the training of new logistics professionals and expand the operation of [f]reight [m]anagement [s]ervices; and
- Generate U.S. tax revenue.

The Petitioner also submitted a business plan for [REDACTED] in response to the RFE. The business plan is undated and, although it contains a “Company History” section, it omits the date on which the company was founded. However, the Petitioner asserted in response to the RFE that she co-founded [REDACTED] and began working as its vice-president and CEO in April 2019. Publicly available information provided by the Florida Department of State confirms that [REDACTED] [REDACTED] has been registered to do business in the state of Florida since February 2019, before the April 2019 petition filing date. See Division of Records, Florida Department of State, *Search Records: Corporations, Limited Liability Companies, Limited Partnerships, and Trademarks*, <https://dos.myflorida.com/sunbiz/search/> (last visited Aug. 10, 2022). The business plan also provides limited information about the workers it employs or intends to employ. The extent of the business plan’s “Personnel Plan” section is: “[REDACTED] defines its total work force to protect the success of its business plan. All aspects of the business have been sufficiently analyzed to determine each and every position required to run a fully functioning operation that can complete all of the strategies and programs to be undertaken.” The only employees the business plan acknowledges are the Petitioner, who serves as the company’s vice president and CEO; the company’s president; and the company’s data analyst. The only work location provided for the company matches the Petitioner’s private residential address, which the record does not establish is in an economically depressed area. See *Dhanasar*, 26 I&N Dec. at 889-90.

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing, “The [P]etitioner has not established that her proposed work has implications beyond her current employer (or any prospective employers or self-owned company), their business partners, alliances, clients, or her workplace at a level sufficient to demonstrate the national importance of her endeavor.” The Director further concluded that “the petitioner has not established that her employment activities in the United States will have a broader impact on her field.”

On appeal, the Petitioner references general “[i]ndustry [r]eports and [a]rticles, which discuss the important role that entrepreneur professionals play in every type of business and within all of Americans’ homes and hearts.” The Petitioner also asserts that her endeavor’s freight transportation company has national importance because “during the COVID-19 pandemic, when supply chain issues have permeated virtually every industry, contributing to resource shortage and inflation, [it] is crucial to restabilize domestic and international trade and commerce.”

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

We first note that the petition filing date is in April 2019, predating the COVID-19 pandemic. A petitioner must establish eligibility at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). A petition may not be approved at a future date after a petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm’r 1971). Because the COVID-19 pandemic began after the petition filing date, the Petitioner’s activities with regard to the COVID-19 pandemic present a new set of facts that may not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45. Accordingly, we need not address that assertion further.

Next, the Petitioner’s references on appeal to general industry reports and articles is misplaced. The Petitioner does not specify which particular report or article addresses the “specific endeavor that the foreign national proposes to undertake” and how it may have national importance. *See Dhanasar*, 26 I&N Dec. at 889. None of the general industry reports and articles refer to the Petitioner, the company she co-founded, or the specific endeavor she proposes to undertake; therefore, they do not establish how the proposed endeavor rises to the level of national importance. *See id.*

As the Director observed, the Petitioner’s proposed endeavor, which entails working as the vice president and CEO of a freight transportation company she co-founded, benefits the company she co-founded, its clients, and its customers. However, the record does not establish how the Petitioner and her company’s operations will have “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *Id.* at 889-90. Although the Petitioner asserts that her freight transportation company “operates in the international logistic industry,” the record does not establish with specific data how its operations, among all freight transportation operations, rises to the level of having national or global implications. *See id.* Furthermore, the record does not establish how the Petitioner and her company’s operations will have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* The business plan in the record does not elaborate with any specific information about the number or types of workers the Petitioner’s company plans to employ, other than herself, the company’s president, and its data analyst. Even if the record established that the proposed endeavor has a significant potential to employ U.S. workers—which it does not—as noted above, the record does not establish that the

company's only identified workplace, which matches the Petitioner's home residential address, is in an economically depressed area, a factor which may help inform whether a proposed endeavor has national importance. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.