



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

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

In Re: 20164928

Date: FEB. 7, 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 legal analyst, 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 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 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 immigration benefit sought. 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. . . . [T]he 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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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 foreign national 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 foreign national. 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 foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national 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 foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

considered must, taken together, 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 record indicates 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 a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner initially indicated that she plans "to work with law firms, businesses, or corporations to provide expert advice as a Legal Analyst." She stated that she intends "to serve as a consultant for multinational companies, including those companies doing business or planning to do business in Brazil. By working with individuals and companies moving into the Brazilian market, I can help navigate the complex regulations that they will face when making the move into this market."³

The Director issued a notice of intent to deny (NOID) requesting the Petitioner to provide further information and evidence regarding her proposed endeavor in the United States. She was informed that she should submit a "detailed description of the proposed endeavor and why it is of national importance." The Petitioner was also asked to present documentary evidence that establishes her proposed endeavor's national importance.

In response to the Director's NOID, the Petitioner stated that she intended "to work on nationally important projects, as well as contribute to cross-border activities" and "to pursue positions within U.S. companies and/or firms that will benefit from my distinguished abilities." She indicated that she has "already begun working with a U.S.-based law firm, [REDACTED] Since joining this company in 2019, I have evolved through the following positions: full-time Paralegal, Business Manager, and ultimately Director of Business Affairs."⁴ The Petitioner further asserted that her proposed endeavor involves "corporate legal affairs" and "attracting additional foreign investments, especially from Latin America." In addition, she explained that her undertaking is aimed at helping foreign investors "navigate the U.S. corporate and business environment, as related to their respective projects within the nation." The Petitioner also noted that she plans "to advise multinational companies, specifically U.S. companies looking to expand into Brazil, on how to enter this market and navigate the complex rules and regulations relevant to the Brazilian business environment."

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

³ Her list of proposed services included: "Consulting on activities in the legal landscape and business environments of Brazil; participating in due diligence to research, identify, and evaluate legal contingencies; aid[ing] in any possible commercial benefits for businesses, corporations, and individuals when doing business in developing markets; proposing solutions to minimize the burden and reduce the risk of any and all pertinent legal issues; advising companies looking to do international business on international laws, especially those that apply in Brazil; and creating a smooth transition for U.S. individuals or entities, especially those looking to do business in Brazil."

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her prospective position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* framework.

The Petitioner submitted a letter of support from [redacted] Director and Partner, [redacted] [redacted] stating that her firm “hired [the Petitioner] as a full-time Paralegal on September 5, 2019, as she has been attending the Associate in Science (A.S.) in Paralegal Studies, an American Bar Association-approved program at [redacted] College.” [redacted] indicated that the Petitioner “was promoted to serve as our Director of Business Affairs in March 2021” and that her duties include serving “on the executive and administrative committees”; overseeing the firm’s “Florida State Minority Supplier Development Council and Business Intake process and Client Related Database”; and creating, enforcing, and maintaining “firm policies and procedures.” In addition, [redacted] noted that the Petitioner is responsible for working “with the firm’s managing partner to develop an overall operations budget,” producing and analyzing “periodic reports concerning the law firms financial matters,” engaging “with the firm’s marketing team to ensure that the firm’s business affairs are managed consistently with the expectations of our clients,” and managing “the business affairs of the law firm, especially with respect to the firm’s clients from Brazil.”

The record also includes information about the legal industry outlook, the value of foreign direct investment to the U.S. economy, the legal aspects of cross border transactions, the taxation of multinational businesses, the job outlook for paralegals and legal assistants, and the services offered by SelectUSA to facilitate business investment into the United States. In addition, the Petitioner provided articles discussing the state of the U.S. legal market, the benefits of international trade, U.S. support for Brazil’s candidacy to become a member of the Organization for Economic Cooperation and Development, and the outlook for global tax policy. The record therefore demonstrates that the Petitioner’s proposed work has substantial merit.

In the decision denying the petition, the Director determined that the Petitioner had not demonstrated the national importance of her proposed endeavor. The Director stated that the Petitioner had not shown that her undertaking stands to “potentially impact her industry or field beyond the projects she is directly involved in.” The Director also indicated that the Petitioner had not demonstrated that the legal work relating to “her proposed endeavor would go beyond her immediate projects and impact the field more broadly.” Additionally, the Director noted that the Petitioner had not shown that her proposed work “offers substantial positive economic effects for the United States.”

In her appeal brief, the Petitioner argues that she “has worked as a corporate lawyer, specializing in Corporate and Tax Law in Brazil. Throughout her 17-year career, she has developed experience in Corporate Law, Criminal Law, Civil Liability, and Consumer Relations across a wide spectrum of regions, including Latin America, and the United States.” The Petitioner’s legal skills and knowledge in her field 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 she proposes to undertake has national importance under *Dhanasar*’s first prong.

Furthermore, the Petitioner asserts that her proposed endeavor stands to “generate substantial ripple effects upon key commercial and business activities on behalf of the United States.” She claims that her undertaking will “contribute to cross-border trade and increased revenue, ultimately helping to increase the flow of money in the U.S. on the national level, which will contribute to U.S. gross domestic product (GDP).” The Petitioner also contends that her proposed work serves the national economy by “analyzing, adapting, and adjusting to developments within the international business and legal arena,

which have the potentiality of affecting U.S. businesses”; formulating and executing cross-border strategies for U.S. and overseas investments, including acquiring, restructuring, expanding, or divesting”; and “managing U.S. companies’ global structur[e].” In addition, she argues that her undertaking will “generate confidence in the U.S. market, thus attracting foreign investors and helping them navigate the U.S. business environment, as related to their respective projects within the nation.” Moreover, she indicates that he proposed work “will have multiple positive effects on the U.S. marketplace, thus enhancing sustainable operations on behalf of the nation, and contributing to a streamlined economic landscape.”

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. 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.* 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 her work. While the Petitioner’s statements reflect her intention to provide valuable legal and business services for her law firm and its clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her 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 record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond her current or future employer(s) and their clientele to impact the legal consulting field or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from her legal and business projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she 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.