



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

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

In Re: 20242664

Date: MAR. 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, an accountant, 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 she 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 Director determined 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 accounting firms, businesses, or corporations to provide expert advice as an accountant." She stated that she intends "to serve as a consultant for multinational companies, including those companies doing business or planning on doing 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 request for evidence (RFE) asking the Petitioner to provide further information and evidence regarding her proposed endeavor in the United States. In response, the Petitioner asserted that she intended "to continue working as an Accountant for my own company to assist U.S. companies in need of my specialized knowledge." She further stated: "In 2019, I started my own company to render services related to bookkeeping, international account recommendation, international tax planning, corporate structure, accounts receivables and accounts payables, and individual and corporate tax preparation services."⁴ In addition, the Petitioner indicated that she planned "to continue offering my accounting expertise within my company as an Accountant assisting U.S.-based companies with the improvement of their accounting systems or financial operations in the United States."

The Petitioner submitted the business plan for her company, [REDACTED] [REDACTED] "a Florida-based accounting services company." This business plan includes industry and market analyses, information about her company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's work experience in Brazil, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that [REDACTED] will employ three personnel in year one, six in year two, eight in year three, 11 in year four, and 12 in year five, but she did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, while her plan offers sales

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

³ Her list of proposed services included: "Prepare, examine, or analyze accounting records, financial statements, or other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards; report to management regarding the finances of establishment; establish tables of accounts and assign entries to proper accounts; develop, implement, modify, and document record keeping and accounting systems, making use of current computer technology; and compute taxes owed and prepare tax returns, ensuring compliance with payment, reporting, or other tax requirements."

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 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.

projections of \$322,507 in year one, \$470,888 in year two, \$611,832 in year three, \$791,630 in year four, and \$888,578 in year five, she did not adequately explain how these sales forecasts were calculated.

The Petitioner also submitted recommendation letters from colleagues who discuss her business skills and accomplishments. For example, regarding the Petitioner's knowledge of Brazilian legal standards, [REDACTED] a lawyer with [REDACTED] stated that the Petitioner "analyzed all the details of the legal regulations and at the international level, and guided us on how we should report the information to the Federal Revenue Service of Brazil." Additionally, [REDACTED] an owner of [REDACTED] asserted that the Petitioner "is certainly a specialist in her field of expertise, and I am confident that her company can benefit not only my company, but it will significantly contribute to the U.S. economy by generating jobs and improving the financial health of U.S. businesses." Likewise, [REDACTED] an accounting and tax manager for [REDACTED] indicated that the Petitioner "has a high level of expertise as an accountant and as an expert on tax legislation" and therefore she "is well-positioned to provide a valuable contribution to the United States economy." The Petitioner's business skills, knowledge, and experience 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.

The record includes information about the long-term outlook for the accounting profession, the value of retaining and recruiting experienced veteran accountants, solutions for maximizing accounting firm staffing in a strengthening economy, pathways for future accounting business success, taxpayer relief during the COVID-19 pandemic, and Internal Revenue Service news and resources. In addition, the Petitioner provided articles discussing technology-driven changes in audit and tax services, the projected increase in job openings in the accounting field, the value of accounting in business, the occupational outlook for accountants, services offered by SelectUSA to facilitate business investment into the United States, Brazilian foreign direct investment in our country, and accounting services in the United States. 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 sufficiently extend beyond her clients to impact the industry or field more broadly." The Director also indicated that the Petitioner had not demonstrated that her proposed work "offers substantial positive economic effects for our nation."

In her appeal brief, the Petitioner argues 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)." In addition, the Petitioner asserts that her endeavor stands "to bring significant contributions to the economy of scale, as well as potentially employ a significant number of U.S. workers." The Petitioner also contends that her proposed work serves the national economy by "offering economic convenience and agility," incentivizing "significant foreign investment activities in the nation," "boosting the U.S.' economic advantage," building "American opportunity," and "driving competitive advantage for U.S.

companies and investors that wish to expand and internationalize their commercial operations.” In addition, she states that her undertaking “promote[s] the national economy by incentivizing cross-border transactions, foreign direct investments, and international business negotiations on behalf of the United States.” Moreover, she indicates that her proposed work “will enhance the United States’ economy and its business capacities.”

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 accounting services for her company’s 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 company and its clientele to impact the accounting 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. Specifically, she has not shown that her company’s future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the sales forecast for [REDACTED] indicates that her company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from the Petitioner’s undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. In addition, although the Petitioner asserts that her company will hire U.S. employees, she has not offered sufficient evidence that the area where [REDACTED] operates is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. 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.