



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 22587364

Date: SEP. 13, 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 architect, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business, 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, 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. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center determined that the Petitioner qualifies for the underlying classification. Nevertheless, the Director denied the petition, concluding that the evidence did not establish that the proposed endeavor has national importance, that the Petitioner is well positioned to advance the proposed endeavor, or that a waiver of the requirement of a job offer would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner reasserts her eligibility, arguing that the Director applied an incorrect standard of proof, did not review each piece of evidence properly, and erred in the decision. 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. LEGAL FRAMEWORK

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.

Section 101(a)(32) of the Act, 8 USC § 1101(a)(32), provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, 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). In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted 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. See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director determined that the Petitioner offered sufficient evidence to establish that she is a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

On her Form I-140, the Petitioner described her work as “[p]lan[ing] and design[ing] structures, such as private residences, office buildings, theaters, factories, and other structural property.” In her initial filing, she described her proposed endeavor as advancing her career as an architect, which involves consulting on architectural design and construction projects, managing the architectural activities of U.S. construction projects, and advising U.S. architectural companies operating or planning to operate domestically and abroad. Specifically, she proposed to help U.S. businesses develop cross-border projects abroad, particularly in Latin America. She intends to provide significant benefits by facilitating business operations of U.S. construction-related companies and investors interested in the architectural, civil, and commercial construction fields in the Brazilian and other Latin American markets. In so doing, she plans to “continue working in [a]rchitecture with multi-national companies,” providing them with guidance on national and cross-border contracts that involve the development of construction projects in the U.S. and Brazil. In her initial professional plan and statement, the Petitioner wrote that she would design, plan, and develop complex architectural and engineering projects.

Regarding the national importance of her proposed endeavor, the Petitioner stated that she will contribute directly to the field of architecture by helping construct U.S. infrastructure. She stated that she can manage cash flows and boost project completion rates, which would also advance the field of architecture. The Petitioner emphasized in her professional plan and statement that her endeavor will impact the United States in the following ways:

- U.S. job creation and revenue;
- Facilitate cross-border construction projects by helping U.S. companies negotiate lucrative contracts with suppliers, manufacturers, and construction companies domestically and abroad, particularly in Brazil;

- Reduce operating costs;
- Increase property values; and
- Optimize the structural integrity of commercial, residential, and government buildings.

In support, the Petitioner submitted background materials on architecture as a career, numerous articles, industry reports, a national interest waiver eligibility advisory opinion, recommendation letters, project completion documents, and photos, among other pieces of evidence. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

Overall, the recommendation letters praise the Petitioner's personal and professional qualities, as well as demonstrate the authors' admiration of her architectural work. Although the authors recognized the Petitioner's past accomplishments, none of the letters described the proposed endeavor or explained why it has national importance. For instance, [REDACTED] the founder of a civil engineering business, described two projects upon which the Petitioner worked and explained how the Petitioner performed well on the projects. However, he did not suggest that the Petitioner's past success in individual and local projects impacted the field of architecture or the nation such that the Petitioner's prior achievements would serve to inform the national importance of her proposed endeavor. Mr. [REDACTED] a hospital executive who interacted with the Petitioner on an architectural project for his hospital, offered a conclusory statement that the Petitioner "is widely-lauded as one of the most capable Architects in [REDACTED]" but he did not offer any evidence to corroborate this claim. Similarly, [REDACTED], an account manager at [REDACTED] stated that the Petitioner is "well known in the real estate market," "stands out" as an architect, and is considered a "second-to-none architect in the region." However, his assertions are not adequately supported by evidence. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. See *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. Id. See also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Here, the letters do not support the Petitioner's eligibility.

We reviewed the background information about architectural careers, articles and reports about the field, the difficulty of staffing architectural firms because of shifting workloads, as well as trends and forecasts on construction growth. While these resources emphasize the importance of the architectural field, they do not mention the Petitioner's specific proposed endeavor such that we can conclude her specific endeavor has national importance. In determining national importance, the relevant question is not the importance of the 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. We acknowledge the importance of the architectural industry and architectural careers; however, this is insufficient to establish that the national importance of the proposed endeavor.

The Petitioner submitted an advisory opinion from [REDACTED] an adjunct professor at the [REDACTED] College of [REDACTED] concerning the Petitioner's eligibility for a national interest waiver. In the national importance section of [REDACTED] opinion, he repeated the contents of the Petitioner's résumé in paragraph form and primarily discussed statistics on architecture and the

Brazilian economy. [] also offered his opinion on the Petitioner's personal and professional qualifications; however, the Petitioner's expertise relates 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 the Petitioner proposes to undertake has substantial merit and national importance under *Dhanasar's* first prong. The advisory opinion does not contain a discussion of the proposed endeavor or its national importance. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinion is of little probative value as it does not meaningfully address the details of the proposed endeavor and why it would have national importance.

The Director issued a request for evidence (RFE), notifying the Petitioner that she had not established the national importance of her proposed endeavor. The decision specifically explained that she had not substantiated her assertion that international architectural or construction contracts would impart national benefits. Furthermore, the RFE explained that the Petitioner had not sufficiently supported her assertions that her proposed endeavor would lead to U.S. job creation, a significant potential to employ U.S. workers, or have other substantial positive economic effects. In addition, the Director noted that the Petitioner appeared to have a standard goal that many architects endeavor to achieve, that of enabling the design and construction of sustainable, multi-use developments. However, the Director stated that a proposed endeavor to achieve this standardized architectural goal did not appear to bear upon national importance.

In her RFE response, the Petitioner clarified that her endeavor is to "contribute to innovative architectural and design projects in the United States in residential, commercial, and industrial architectural projects." Further, she will offer consulting services to support and optimize businesses operating in architecture, interior design, civil construction, and focus on solutions that account for ergonomics, health, and environmental sustainability. In an updated professional plan and statement, she wrote that she intends to establish her own company in the United States, which would contribute significantly to the domestic job market and the national economy. Her endeavor also includes pursuing a course of study on the Florida construction market, as well as pursuing what appear to be the requirements for obtaining an architectural license in the United States.

In our review, we conclude the Petitioner's proposed endeavor, as articulated in her RFE response, differs markedly from the focus of her initially described proposed endeavor activities. When she initially filed her Form I-140, her proposed endeavor largely focused on architectural consulting for multinational companies and on architectural projects that involved cross-border construction projects between the United States and Brazil. However, in her RFE response, the Petitioner shifted her focus to running her own architecture business and engaging in individual projects in Florida. While these activities share a connection through architecture, the emphasis of the endeavor appears to be quite different. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889. Here, we conclude that the Petitioner has not identified a specific and consistent proposed endeavor. Additionally, the evidence suggests that the Petitioner established her new business after the filing date of the initial petition. A visa

petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). Furthermore, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant changes are made to the initial request for approval, the Petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

Nonetheless, we examined the claims regarding the national importance of her proposed endeavor. The Petitioner claimed that her endeavor would have the prospective impact of improving structural safety, occupant health, employment in a significant number of industries, training for architectural professionals, and practices in construction and development. Moreover, she stated that these impacts would occur on a national level, as well as positively impact the U.S. economy. Because her architecture and design company specializes in remodeling and project consulting, she intends to create direct and indirect job opportunities by hiring U.S. workers. Through her company, she expects to meet certain socioeconomic needs in the United States, as she believes her services will improve construction development, which could facilitate commercial and societal activities. Additionally, she emphasized that her “techniques can be applied to a wide range of industry areas” and that her innovative technological methods can enhance operational efficiency and quality, which would enable her to impart benefits on a wide, even global, scale.

The Petitioner further asserted that her proposed endeavor is national in scope and will produce significant national benefits due to the ripple effects of her professional activities. She provided examples of the ripple effects, including “spur[ring] U.S. real estate investments, prioritiz[ing] the domestic job market, and ultimately increas[ing] the flow of money into the [United States] on a national level, which will contribute to the U.S. gross domestic product (GDP).” While initiating the ripple effects described above, the Petitioner asserted that she would also contribute to societal welfare through the development of sustainable construction and real estate practices, such as those that will account for climate change and address the affordable housing crisis. The Petitioner claimed her work would stimulate foreign investment activities within the U.S. real estate industry, enhance real property value, and promote local economies through improving urban design quality. She asserted that she would contribute to longer term benefits, such as boosting economic growth and promoting the livability of cities and urban areas. In support of her claims, she cited statistics concerning real estate’s contribution to the GDP, how consumer spending contributes to the economy, and how consumer spending impacts the real estate market. She then concluded that her area of business, residential real estate developments, “carries substantial economic weight” and “spurs recurring financial opportunities for the [United States] at large.” The Petitioner also pointed out that her endeavor would support and promote entrepreneurship and that this would produce a positive impact on the economy and increase the chances of discovering innovative solutions to social challenges faced around the world.

To support the assertions in her RFE response, the Petitioner referenced the evidence previously submitted and offered additional evidence, including numerous industry articles and reports, an updated professional plan and statement, and an additional recommendation letter, among other pieces of evidence. The articles and reports address topics including, but not limited to, the real estate industry, the impact of real estate on the U.S. economy, entrepreneurship, affordable housing, and the

economic and fiscal consequences of immigration. While some of the articles reinforce the importance of architecture as an industry, other topics appear too attenuated to be relevant to the matter at hand. For instance, articles on foreign direct investment (FDI) are only loosely connected to architecture, as foreign buyers can affect real estate and the economy. The articles on the need for affordable housing appear to emphasize the availability of the housing, rather than the specific architecture of it. Overall, while these articles bring awareness to issues that are adjacently relevant to the field of architecture, none of the articles discuss the proposed endeavor or establish how the specific proposed endeavor has national importance.

The additional support letter from a former classmate, [REDACTED] described projects upon which he and the Petitioner collaborated upon in the past, but it did not contain a discussion of the proposed endeavor or its national importance. We reviewed the Petitioner's business plan in which she described her vision, mission, and the services she will provide. In the first five years of operation, the Petitioner anticipates that she will create 43 direct jobs and generate over two million dollars each in salaries and income tax. Even if the Petitioner succeeded in achieving these benchmarks, this would not be sufficient to demonstrate that the Petitioner's endeavor impacts the field of architecture as a whole or stands to impact the nation on a level commensurate with national importance. In *Dhanasar*, we 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." *Dhanasar*, 26 I&N Dec. at 889. There is little indication from the evidence provided that the impact of the proposed endeavor would reach the field of architecture or extend beyond the specific locations and parties involved in the architectural projects.

Although the Petitioner highlighted the ripple effects of her work and stated that her endeavor would positively impact the economy, job creation, affordable housing, environmental sustainability, and societal activities, among other benefits, she has not offered sufficient evidence to corroborate these claims. As discussed above, it is not apparent that the Petitioner's proposed endeavor activities would operate on such a scale as to rise to the level of national importance. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support her assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Furthermore, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. As noted above, many of the benefits the Petitioner claimed that the proposed endeavor would create, such as affordable housing and enhanced societal activities, appear to depend less on a specific structure's architecture and more upon the funding, physical space, and availability of them. Other benefits the Petitioner claimed, such as those related to real estate, depend on numerous factors, the architecture of which appears to be just one. The Petitioner did not offer a sufficiently direct evidentiary tie between her architectural services and the claimed results.

We acknowledge the Petitioner's claim that she has "techniques" and innovative methods. However, she does not explain what these techniques and methods are, whether they are unavailable or unknown in the United States, or whether the quality of her architectural capabilities is better than that which is already offered in the United States. Even if she had demonstrated this, it would not establish how her methods and techniques would be available to individual architects or to the public at large. Similarly, 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. *Dhanasar*, 26

I&N Dec at 893. Here, we conclude that although individual clients and companies may benefit from her services, she has not offered sufficient evidence to demonstrate how this individual benefit rises to the level of national importance or stands to impact the field more broadly.

The proposed endeavor may very well improve individual buildings and construction projects; however, the record lacks sufficient evidence to establish a strong connection between the proposed endeavor activities and job creation, tax revenues, and societal enrichment on a level commensurate with national importance. Not all business activity has the potential to impact the economy on a nationally important scale. While the Petitioner's proposed endeavor may impact the individuals and businesses that engage her for her services, the evidence does not suggest that the Petitioner's services will be available on a level that creates national or global implications in the architectural field. 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 the Petitioner's services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner contends that the Director did not duly consider certain pieces of evidence and failed to apply the correct standard of proof when reviewing the evidence. In support, she relies primarily upon the evidence and arguments previously submitted. While we acknowledge the Petitioner's appellate claims, we nevertheless conclude that the documentation in the record does not sufficiently establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

III. CONCLUSION

The Petitioner has not established that her proposed endeavor has national importance. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prong outlined in *Dhanasar* would therefore serve no meaningful purpose.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. 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).

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. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.