



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

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

In Re: 26269849

Date: APR. 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a risk management advisor in the occupational health and safety sector, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this 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. The Director concluded that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree, but did not establish that a waiver of the required job offer, and thus of the labor certification, would be 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 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business, under section 203(b)(2) of the Act.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act; *see also* 8 C.F.R. § 204.5(k)(4)(ii). While neither the 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, 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

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record supports this determination based on the Petitioner's submission of an official academic record establishing that she possesses the foreign equivalent of a bachelor's degree in occupational health and safety, as well as letters from her employers documenting more than five years of progressive post-baccalaureate experience in this specialty. *See* 8 C.F.R. § 204.5(k)(2) (defining "advanced degree") and 8 C.F.R. § 204.5(k)(3)(i)(B) (stating the initial evidence requirements for this classification).

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. In denying the petition, the Director addressed all three prongs of the *Dhanasar* analytical framework and concluded that the Petitioner did not demonstrate that she meets any of them. On appeal, the Petitioner maintains that she meets all three prongs and is otherwise eligible for a national interest waiver as a matter of discretion.

For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. The Proposed Endeavor

The Petitioner intends to work as a risk management advisor in the occupational health and safety sector in the United States.² As noted, the Petitioner has a bachelor's degree in this field, and she provided evidence of her completion of additional professional training related to this specialty. The record reflects that she was employed by a private school in Colombia for over 21 years, where she most recently held the position of head of occupational health and safety, responsible for designing, implementing, and monitoring the school's health and safety management systems and biosafety protocols. Her résumé indicates that she has concurrently provided services as an advisor and trainer in occupational health and safety and biosecurity protocols for several other employers.

With respect to her proposed endeavor in the United States, the Petitioner provided evidence that she co-founded a Florida limited liability company, [REDACTED] for which she will serve as risk management advisor and manager. She submitted a business plan and supplemental company description indicating that her business will offer consulting services in this field primarily to educational institutions

² The Petitioner emphasizes on appeal that the Director's decision consistently refers to her occupation as that of a risk management advisor in the field of "financial analysis and planning," despite acknowledging her submission of supporting evidence that relates to the field of occupational health and safety. We acknowledge this error but have determined upon de novo review that the error was not material to the outcome of the decision and has not impacted the Petitioner's ability to challenge the decision on appeal.

and small businesses in Florida, with a focus on Hispanic-owned businesses in the [] area. The Petitioner indicates that her company will offer advisory services to clients seeking to identify and mitigate safety and health hazards in school and work environments. The offered service categories will include hazards identification, security inspection, hazard matrix design services, development of hazard intervention proposals, delivery of education and training plans and workshops, and monitoring the effectiveness of risk and hazard intervention measures.

B. Substantial Merit and National Importance

To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that her proposed endeavor has both substantial merit and national importance. This prong of the *Dhanasar* framework focuses on the specific endeavor that the individual 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. The record supports the Director's determination that the Petitioner's proposed endeavor, which aims to improve the health and safety environments of schools and workplaces, has substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. The business plan for [] includes market analyses, business and marketing strategies, financial forecasts and projections, a description of company management and personnel, and a summary of the company's expected "national level impact." According to the business plan, the company will "contribute positively to the country by generating direct and indirect jobs, purchasing products provided by U.S. suppliers, paying taxes and transferring [the Petitioner's] knowledge" to the clients that use her services, and to other U.S. workers. The business plan also mentions benefits such as "improving the risk and safety management sector in the U.S.," contributing to industry revenue growth in the risk management sector, alleviating a growing talent shortage faced by America's aging workforce, and indirect economic benefits that would result from a decrease in accidents at schools and workplaces.

[] business plan forecasts first year revenues of over \$205,000, increasing to approximately \$500,000 in year five. In addition, the included personnel plan projects that, by year five, the company will employ the Petitioner as risk management advisor, a part-time administrative assistant and three full-time risk instructors and advisors with total expected payroll expenses of \$319,829. The business plan also includes the company's projected payroll and income tax payments and predicts that the business would generate six indirect jobs, based on national job multipliers published by the Economic Policy Institute.

In support of her claim that she can satisfy the first prong of the *Dhanasar* analytical framework, the Petitioner provided articles about school-based crime and bullying published by the National Center for Education Statistics, and an article titled "University of [] Crime and Safety in 2019," published by College Factual. These articles provide statistics regarding crime, health, safety, and security issues in U.S. schools and on college campuses. Another article, titled "Everything You Need to Know About Risk Management in Schools" discusses "the key concepts of risk management" in educational settings, particularly with respect to the COVID-19 pandemic, noting that "risk management is important because it keeps . . . students, faculty and finances safe from any harm while also protecting your financial assets and lowering your legal liability."

The Petitioner's supporting evidence also includes background on the Occupation Health and Safety Administration (OSHA) from the agency's website, and a *Small Business Health and Safety Health Handbook* published by OSHA and the National Institute for Occupational Safety and Health (NIOSH), which summarizes the benefits of effective safety and health programs and lists workplace safety and health resources available to small businesses.

This supporting documentation provides support for the Petitioner's claim that her proposed work in the occupational health and safety sector has substantial merit. However, in evaluating 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. 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.

Therefore, 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. Although the Petitioner's statements reflect her intention to provide valuable risk management and intervention consulting services for her 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 find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her company and clientele to impact the occupational health and safety field or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner provided an article titled "The Demand for Safety Professionals in the U.S." which addresses the increasing demand and need for individuals who possess her expertise. However, statements regarding the occupation or the field in general do not establish how the Petitioner's specific proposed endeavor stands to impact the broader field or otherwise establish its national importance. We have considered the business plan for [REDACTED] but it does not demonstrate that the proposed endeavor's future staffing levels and consulting activity would provide substantial economic benefits in Florida or the United States, that it would meaningfully alleviate a shortage of trained professionals in the occupational health and safety field, or that its projected future revenues of \$500,000 would significantly contribute to the growth of what is described in the business plan as a \$6.5 billion industry expected to grow to \$8.8 billion by 2025.

Although the business plan reflects that the company will hire several workers, the record does not contain sufficient evidence to reflect that the area where it will operate is economically depressed, that it would employ a significant population of workers in the area, that the specific proposed endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, trade, or related tax revenue. Accordingly, the record does not support that the creation of four additional jobs in this sector or the expected tax revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the

first prong of the *Dhanasar* framework. Although the Petitioner also emphasizes that its clients will benefit financially from implementing risk management practices that improve occupational health and safety in work and school settings, the record does not contain any estimates of indirect cost savings or economic benefits that could be attributed to her company's services.

While we acknowledge the value of implementing measures designed to reduce the incidence of accidents, injuries and illnesses in workplaces and schools, the Petitioner has not shown how her specific proposed endeavor will broadly enhance societal welfare. For example, the Petitioner's statements and business plan emphasize that [redacted] County is home to the fourth largest K-12 public school district in the United States, but the record does not support a determination that the Petitioner's company would be positioned to have a district-wide impact on the health and safety policies and systems implemented by this school district. Rather, the record indicates that the company intends to target small businesses and individual schools in the [redacted] area. The Petitioner submitted letters from three businesses interested in [redacted] services and one contract indicating a client has engaged the company to provide a four-hour training for a fee of \$500. Although the proposed endeavor will likely benefit the client companies and any schools that may engage the Petitioner's company, the record does not sufficiently show that such benefits, either individually or cumulatively, would rise to the level of national importance.

The Petitioner has also claimed that her proposed endeavor impacts a matter that has been described as having national importance or is the subject of national initiatives. Specifically, she refers to a White House Executive Order on Protecting Worker Health and Safety, issued on January 21, 2021, which states that "[e]nsuring the health and safety of workers is a national priority and a moral imperative." The executive order outlines actions to be taken by the federal government to reduce the risk of COVID-19 infections in the workplace. While the document indicates the importance of protecting the health and safety of workers, its focus is on the U.S. government's role in doing so; it does not specifically show the government's interest in the Petitioner's proposed endeavor or similar endeavors.

On appeal, the Petitioner emphasizes the importance of the industry or profession, her expertise, and her role within her newly formed company; however, for the reasons discussed, these factors do not sufficiently establish the national importance of the proposed endeavor. The Petitioner likewise reiterates her professional experience, past achievements, and abilities. While important, the Petitioner's expertise acquired through her education, training and employment relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong.

Considering the above conclusions, the Petitioner has not met her burden of proof to establish that she meets the first prong of the *Dhanasar* national interest framework. Although the Director also concluded that the Petitioner had not established her eligibility under the second and third prongs of the *Dhanasar* framework, detailed discussion of these prongs cannot change the outcome of this appeal. Therefore, we reserve those issues and will dismiss the appeal as a matter of discretion. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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 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.

ORDER: The appeal is dismissed.