



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

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

In Re: 26169024

Date: APR. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a financial manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that, while the Petitioner qualified as a member of the professions holding an advanced degree, she had not established 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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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. 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 USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

- 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.²

II. ANALYSIS

The Director determined that the Petitioner did not meet any of the three prongs of the *Dhanasar* framework. On appeal, the Petitioner asserts that, rather than applying the governing standard of review, preponderance of the evidence,³ the Director “imposed novel substantive and evidentiary requirements beyond those set forth in regulations.” While we agree with the Director’s conclusion, we do not agree with the Director’s assessment of the record with regard to the Petitioner’s educational qualifications or the national importance of the Petitioner’s endeavor, as explained in the following analysis.

A. Eligibility as an Individual Holding an Advanced Degree

As evidence of her education and experience, the Petitioner submitted a copy of her bachelor’s degree in administration from Universidade [redacted] in Brazil, her academic record, an academic evaluation letter, and letters from four previous colleagues at [redacted]. The Director determined that the Petitioner met the advanced degree requirement through her attainment of the foreign equivalent of a baccalaureate degree and a minimum of five years of progressive post-baccalaureate work experience. Based on the evidence of record, we do not reach the same conclusion for the following reasons.

The record contains a letter from a credential evaluation service that demonstrates that the Petitioner’s degree is the foreign equivalent of a U.S. baccalaureate degree in business administration. The record, however, does not contain evidence demonstrating that the Petitioner has at least five years of progressive post-baccalaureate work experience. Three letters from previous coworkers and a letter from a previous supervisor demonstrate that the Petitioner has worked in banking. The letters reference the Petitioner’s employment from 2015 to 2017, a period of two years; the record does not demonstrate that the Petitioner has at least five years of post-baccalaureate work experience. The Petitioner has not established that she holds an advanced degree.⁴ Thus, the Petitioner has not demonstrated her eligibility for the underlying EB-2 classification.

B. National Interest Waiver

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).

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

³ See *INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place).

⁴ The Petitioner does not claim to qualify for EB-2 classification as an individual with exceptional ability in the sciences, arts, or business.

The first prong, substantial merit and national importance, 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner initially described her endeavor as coordinating the financial activities “of a branch, office, or department of an establishment” and working as a “financial manager for a company or organization in the field of finance.” In response to a request for evidence (RFE), the Petitioner submitted a business plan describing a partnership that will operate as “an independent financial and investment consulting and advisory firm.” The Director determined that the Petitioner's intent had changed and that this amounted to a material change⁵ to her petition, rendering her proposed endeavor's “national importance doubtful”; the Director stated that, although USCIS had initially determined that the proposed endeavor had substantial merit, “the shift in the petitioner's intent makes the prior determination moot.” Upon review of the record, while we conclude that the Petitioner has not established that her endeavor is of national importance, we disagree with the Director's assessment. The record initially included the following description of the Petitioner's endeavor:

I propose to use my skills and knowledge, gained throughout my professional experience, to work as a Financial Professional for U.S. institutions, either in the banking sector, or in the area of finance, management, or by assisting companies from various sectors within this broad area, which desire to expand and grow their businesses, and generate more clients.... I intend to prospect investment opportunities, establish partnerships, and work with clients in different financial platforms in the U.S.... I fully intend to continue my career in the United States as a Financial Professional, using my expertise to drive profitable business opportunities for U.S. companies, as well as to serve as a liaison between the U.S. and Brazil.

It was unclear from the initial evidence of record what the Petitioner was proposing as her endeavor beyond the general provision of financial services promoting business growth; the description of her endeavor did not consistently indicate whether or not she would work for a single entity or in what manner she would otherwise provide her services. The Petitioner's response to the RFE clarified that her intent is entrepreneurial in nature; she intends to embark on a business partnership providing financial consulting services. As the Petitioner does not dispute the Director's determination of material change on appeal, we deem this issue to be waived and will not discuss it further.⁶

On appeal, the Petitioner generally asserts that the evidence of record establishes the national importance of her endeavor, stating that USCIS “did not give due regard” to that evidence. She cites industry reports in the record that discuss and an impending shortage of financial professionals in the United States, stating that the need for her expertise and contributions is sufficiently urgent to waive the labor certification process. The Petitioner provided articles discussing the value of entrepreneurs

⁵ See *Matter of Izummi*, 22 I&N Dec. 169 (AAO 1998) (stating that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements).

⁶ See, e.g., *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

in the global economy and the value of immigrants in the U.S. economy. We conclude that her endeavor has substantial merit.

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. 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. In addition, the argument that labor certification requirements be waived due to a labor shortage is not persuasive, as the purpose of the labor certification process is to identify jobs where there are no qualified, willing, and available U.S. workers.

The Petitioner’s business plan states that “the endeavor will be generating forty (40) jobs for U.S. workers. With expected revenue of approximately 2.4 million dollars within the first five (5) years of operations in the state of Florida.” The business plan further states that the Petitioner’s company “is ready to boost local economies, specifically in the underserved business zones, of several states across the United States. This has the potential to attract investments and expand throughout the United States in the following years.”

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 financial 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 conclude that the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond her clientele to impact either the financial services industry or international business initiatives more broadly at a level commensurate with national importance.

In addition, the Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. Specifically, she has not shown that her company’s future staffing levels, business activity, associated tax revenue, and international financial initiatives stand to provide substantial economic benefits to Florida or to the United States. While the financial outlook provided in the business plan demonstrates the company’s growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from the Petitioner’s endeavor would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*.⁷ In addition, although the Petitioner asserts that her company will hire U.S. employees, she has not provided evidence to establish that the area in which the company will operate 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

⁷ *See Dhanasar*, 26 I&N Dec. at 890.

economic benefit through employment levels, business activity, or tax revenue. The Petitioner's unsupported statements are insufficient to meet its burden of proof. A petitioner must support assertions with relevant, probative, and credible evidence.⁸ While the Petitioner claims that her endeavor will "generate substantial ripple effects upon key commercial and business activities on behalf of the United States," she has not shown that the prospective impact of the business services performed by her company represents a significant share of the financial services market. The Petitioner has not demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified basis for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework.⁹

III. CONCLUSION

The Petitioner has not established her eligibility for the EB-2 classification, nor has she demonstrated that her proposed endeavor has significant potential to employ U.S. workers, to impact an economically depressed region, or to otherwise offer substantial positive economic effects for the United States. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.

⁸ See *Matter of Chawathe*, 25 I&N Dec. at 376.

⁹ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); 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).