



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

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

In Re: 25872150

Date: APR. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing professional, seeks 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 although the Petitioner qualified as an advanced degree professional, 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

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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

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. Accordingly, the remaining issue to be determined on appeal 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

As a preliminary matter, the Petitioner alleges on appeal that the Director “did not apply the proper standard of proof in this case, instead imposing a stricter standard . . . to [her] detriment.” Except where a different standard is specified by law, the “preponderance of the evidence” is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375; *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the “preponderance of the evidence” is the standard of proof governing national interest waiver petitions. *See generally* 1 *USCIS Policy Manual* E.4(B), <https://www.uscis.gov/policy-manual>. While the Petitioner asserts on appeal that she has provided evidence sufficient to demonstrate her eligibility for a national interest waiver, she does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

The Petitioner is a marketing professional and intends to work in the United States as a marketing manager. She initially provided a professional plan and statement stating that her extensive background experience in the areas of marketing, commercial, administrative, and sales in the pharmaceutical sector will be beneficial for companies in the U.S. looking to reach key targets in these segments. She described her proposed endeavor as follows:

My career plan in United States is to continue working with American companies that require my specialized knowledge, years of experience, and significant expertise. I intend to continue designing marketing and sales strategies, maintaining positive working relationships with peers to facilitate company growth, and identifying viable opportunities for business development through extensive research.

If my waiver is granted, I will contribute directly to the field of marketing helping U.S. businesses improve their strategies and practices. Many U.S. companies depend on marketing managers to reach their target markets and increase brand recognition. I am an expert in marketing management, sales, business development, market research, financial analysis, business consulting, digital marketing, communications, strategic planning,

personnel management, entrepreneurship, and leadership in the pharmaceutical sector. I can apply my knowledge to U.S. companies that depend on these strategies to grow and build their product and companies.

My specific endeavor will potentially impact the U.S. in the following ways:

- Increase visibility of company brands;
- Improve brand awareness and recognition;
- Engaging in market research to assess needs in the business development area;
- Monitoring and managing of marketing across all platforms; build authority and credibility in the market;
- Position a company as a leader in the industry;
- Facilitating cross-border projects by helping navigate international business environments;
- U.S. job creation; and,
- Contributing to the U.S. GDP.

The Petitioner also submitted support letters and industry reports and articles in support of the national importance of her proposed endeavor.

The Director determined that the initial evidence was insufficient to demonstrate that that she was eligible for a national interest waiver, and issued a request for evidence (RFE). In response, the Petitioner submitted a new statement in which she proposed to work as the marketing manager of her own company, [REDACTED] and submitted a copy of the company's business plan. She indicated that this company would primarily work with brands that had low or no sales and presence on Amazon to help them understand their customer needs and the markets with which they were competing. The Petitioner, however, did not indicate how her duties would be divided between serving as marketing manager for her company and performing marketing duties for other companies as she described earlier.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance, citing to the inconsistent claims regarding her proposed endeavor. On appeal, the Petitioner submits a brief asserting that the decision to deny the petition was in error and that she is eligible for a national interest waiver.

As noted by the Director, the Petitioner's initial description of the proposed endeavor did not include plans to work as the marketing manager of her own company; instead, the Petitioner initially claimed that she would "continue working with American companies that require my specialized knowledge, years of experience, and significant expertise." We conclude the RFE response presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); see also *Dhanasar*, 26 I&N Dec. at 889-90. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1).² Here, when the Director asked the Petitioner for more details about her proposed endeavor in the RFE, the Petitioner responded by significantly changing the endeavor, rather

² The business plan submitted in response to the RFE was drafted in June 2022, over two years after the filing of the petition.

than establish the national importance of the proposed endeavor as described at the time of filing. A petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that individuals seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90. As noted, the Director notified the Petitioner in the RFE that she had not established that her original proposed endeavor was of national importance. While we note the Petitioner’s submission of articles about the marketing industry, marketing managers and consultants, and entrepreneurs in general, this evidence does not concern her specific endeavor of providing marketing services and designing market strategies for U.S. companies.³

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, as initially described, stands to sufficiently extend beyond her employer(s) and their clientele to impact the marketing industry or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the particular work she proposes to undertake offers original innovations that contribute to advancements in the marketing industry or otherwise have broader implications for her field. In addition, she has not sufficiently demonstrated that her specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. While the Petitioner’s initial statements reflect her intention to provide marketing advice and expertise to U.S. companies, 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. Moreover, subsequent material changes to the proposed endeavor cannot retroactively establish eligibility at the time of filing, and the record contains conflicting information about the basic nature of the proposed endeavor.

On appeal, the Petitioner states that she is currently the Head of Marketing and Sales for her company, and that she intends to “contribute to the U.S. economy by developing and expanding her company.” She further claims that her ability to work in this “vital sector” will “enhance the United States economy” through her own company. She also asserts that by helping U.S. companies in foreign markets, and particularly in Brazil, her endeavor will create U.S. jobs. However, as the Director noted, the evidence does not show that her company and its activities would have economic impacts beyond the clients it would serve such that it will have broader implications for businesses in the United States.

³ While we may not discuss every piece of evidence submitted, we have reviewed and considered the record in its entirety.

The proposed endeavor of marketing benefits the Petitioner's employer(s) and their clients; however, the record does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner's employer(s) and clients, as contemplated by the first *Dhanasar* prong. *See id.* at 889. For example, although the Petitioner asserts that she "will enhance the United States economy," the record does not establish whether the potential to employ U.S. workers is significant, and whether the potential positive economic effects would be substantial. Petitioners bear the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361. Similarly, the record does not establish how the proposed endeavor of working as a marketing manager for one or more companies, including her own, rises to the level of broader implications within the field, as contemplated by *Dhanasar*. *See id.*

Finally, we note the Petitioner's statements on appeal regarding her expertise and prior career accomplishments in Brazil. These statements, however, address aspects of the second *Dhanasar* prong but do not address how the proposed endeavor in the United States has broader implications beyond her immediate employer(s) and their clients, as required by the first *Dhanasar* prong. *See id.* Moreover, the Petitioner's focus on appeal on the "role and importance of marketing" in general does not address aspects of the specific endeavor and how the performance of the planned activities under the endeavor would have broader implications, rising to the level of national importance as contemplated by *Dhanasar*. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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).

III. CONCLUSION

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