



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

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

In Re: 28049211

Date: AUG. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a change management specialist in the field of human resources, 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 the record did not establish that the Petitioner qualifies for a national interest waiver. 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.

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.” *Id.* 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record supports that conclusion. 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 Petitioner intends to continue her work in the United States as a change management consultant. She has worked for several employers in this capacity and, if approved for a national visa waiver, plans to establish her own consultancy company to aid small- and medium-sized businesses in developing and maintaining diverse, equitable, and inclusive workforces.

The Director concluded that, while the Petitioner's proposed endeavor has substantial merit, the Petitioner did not meet any of the three prongs of the *Dhanasar* framework. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her endeavor in order to establish her eligibility under the first prong of the *Dhanasar* analytical framework.

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.

On appeal, the Petitioner submits a brief in which she asserts that the Director erred by not addressing evidence of record specific to each prong, as well as in his application of *Matter of Katigbak*³ to his assessment of whether the Petitioner met eligibility requirements. This latter assertion refers to the Director's determination that the Petitioner's business plan—which was submitted in response to a request for evidence (RFE) and post-dates the filing date of the petition—is inadmissible as evidence. The Director characterized the business plan as a subsequent development or event in the Petitioner's career, which “cannot retroactively establish that she was already eligible for the classification sought as of the filing date.” The Petitioner's brief provides the following:

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 *Matter of Katigbak*, 14 I&N Dec. 45 (Reg'l Comm'r 1971) (stating that individuals seeking employment-based immigration classifications must possess the necessary qualifications as of the filing date of the visa petition).

The business plan was provided in response to the RFE. It did not show or claim that [the Petitioner] possessed new qualifications which were initially needed to meet the legal standard. Instead, it provided additional explanation of her success record and entrepreneurial strategy for the time that her green card would be approved and she could start her planned entrepreneurial venture.

Review of the record shows that the cover letter submitted with the Petitioner's initial evidence provided the following description of the Petitioner's endeavor:

[The Petitioner] would like to start a consultancy to help small business owners provide racial and gender diversity...[and] to institute measurable impacts for corporate workforces to ensure that businesses maintain an employee culture and talent pool consistent with 21st century corporate expectations.... She is a prospective entrepreneur who would like to set up a consultancy so she can provide guidance and assistance nationwide.

The record also includes a personal statement initially submitted as evidence in which the Petitioner references a business plan, stating,

My business plan includes leveraging the concept of the Shared Services Centers model that most large enterprise organizations have in their structure but offer it as a service for small and mid-size businesses.... I plan to create a similar structure but focused on Strategic Human Resources, Organization Development, Organizational Culture, and Change Management, all areas where I have a track record and expertise, to be shared by multiple small and mid-sized business owners, allowing them to be serviced with high-quality human resources professionals.

It is clear that the Petitioner was planning her business endeavor prior to filing her petition. Therefore, the fact that the date of the business plan post-dates the filing date of the petition does not affect her eligibility at the time her petition was filed. We will consider the Petitioner's business plan as evidence submitted in support of her proposed endeavor. As to the Petitioner's concern that the Director did not properly review the evidence submitted or give reasoned consideration to the issues raised, we reiterate that we will review this case de novo.

On appeal, the Petitioner questions the Director's evaluation of the national importance of her proposed endeavor, stating that "the reasoning for the denial of this prong was based solely on allegedly not proving the entrepreneurial venture's national importance." The Petitioner emphasizes her past record of success working for prominent corporations and indicates that her endeavor will be an extension of that success. She states, "We spent a significant amount of the RFE response discussing her past track record of impact on the employees (and their families) at multi-national corporations with tens of thousands of employees impacted by her work." The Petitioner points to articles submitted in response to the RFE that discuss how implementing change management policies for large corporations can broadly impact society and shareholder pressure on companies to increase board diversity. While the evidence of record—including detailed letters of support from previous employers—demonstrates the Petitioner's accomplished record in her management positions directing various employee relations projects and initiatives, the fact that a central tenant of her proposed

endeavor is a lone business venture—a consultancy firm—must be considered when evaluating whether it rises to the level of 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. 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. Further, 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. 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.

The business plan emphasizes the Petitioner’s experience and how her expertise will directly benefit the company. However, evidence of the Petitioner’s job experience and performance generally relates to the second prong⁴ of *Matter of Dhanasar*. The business plan also states that, in order to achieve her endeavor “to increase diversity, equity, and inclusion in corporate America,” the Petitioner will provide “change management advisory services to small and medium-sized enterprises (SMEs), companies in the IT Industry and the Logistics Industry.” The business plan goes on to explain the following:

As these industries in particular attract a diversified workforce, the Petitioner’s knowledge will ensure that these clients receive all the support they need in establishing effective employee strategies through change management programs. Change management is a collective term for all approaches to prepare, support and help individuals, teams, and organizations in making organizational change. [The Petitioner’s] focus on change management related to employee strategies, as well as on diversity, equity, and inclusion (DEI) will significantly aid SMEs in establishing effective employee systems, ensuring high retention rates and high levels of employee satisfaction. While large corporations have resources necessary to internally navigate and prepare for these changes, SMEs seldom have the funds to implement changes, or the luxury to fail in their goals. Therefore, these entities are in dire need of an expert

⁴ Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision. We note that the record does not include—and the Petitioner does not reference—experience forming or operating a business, nor does any of the evidence of record contemplate funding to finance the business. A lack of experience previously engaging in a business venture and the absence of financial resources to operate the business are relevant to whether the Petitioner’s proposed endeavor can credibly be undertaken or carried out within a realistic timeframe that will benefit the United States. These considerations are essential to an assessment of the proposed endeavor’s potential prospective impact. While the ultimate goal of a proposed endeavor may, for example, enhance societal welfare, we must consider the endeavor’s significant potential to prospectively do so. *See generally* 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

to help them establish realistic goals and effectively execute, measure, and evolve change management strategies.

[The Petitioner] will pursue the proposed endeavor by establishing and spearheading operations of [the Company] as its President. The Petitioner will incorporate [the Company] in New York in Year 1.... [The Petitioner] will transfer her vast change management and HR-related knowledge to the Company's employees, in addition to providing expert change management advisory services to the Company's clients herself.

The business plan anticipates that the company will expand from New York to several additional northeastern states in its first two years of operation and to California, [REDACTED] and Texas by its fifth year. The business plan also anticipates having eleven in-house employees by its fifth year and that the company "will increase its revenues from \$494,000 in Year 1 to \$1,332,673 in Year 5." A profit-and-loss table in the business plan forecasts a net profit of \$36,260 at the conclusion of the company's first year of operation; it projects a net profit of \$102,064 and a net worth of \$335,453 by its fifth year. The business plan further states that the company "will have significant potential to employ a number of U.S.-based workers, thereby stimulating the U.S. economy by creating new jobs and increasing the amount of payroll taxes paid," with the expectation that payroll and net income taxes will total \$190,068 by its fifth year. The business plan does not provide the origins of these presumptive calculations, nor are the numbers corroborated by probative evidence to demonstrate the plausibility of the projected scale of the company's growth. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

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 business activity stands to provide substantial economic benefits to the cities and states in which she expects to expand her business or to the United States overall. While the business plan explains that her company's services will help other companies succeed and that their success, in turn, will benefit the U.S. economy, that reasoning is based on a scenario in which her single small business rapidly expands and effectively serves an extensive number of clients; the business plan does not demonstrate that any 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*. *Id.* at 890. It is not clear how a business of the size and scope described will impact and positively affect a given region in which either her employees or clients are located. Although the Petitioner asserts that her company will hire U.S. employees, she has not provided evidence to show that she would employ a significant population of workers in a particular region, nor has she shown that her endeavor would offer a region or its population substantial economic benefits through employment levels, business activity, or tax revenue. Neither the business plan nor the remaining evidence in the record demonstrate that the Petitioner's endeavor to operate a small business rises to the level of national importance. 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 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) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not established that 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.