



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

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

In Re: 28052463

Date: AUG. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an operational risk manager and consultant, 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 for classification 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

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.

The Petitioner intends to work in the United States as an operational risk manager and consultant. In a letter of support, counsel for the Petitioner indicated that she intended "to use her expertise to consult numerous U.S. businesses, developing and implementing risk management plans, factoring the various potential risks and events before they occur, allowing organizations to save money and protect their future."

The Petitioner submitted a personal statement describing her proposed endeavor as follows:

I would like to pursue my endeavor as an Operational Risk Manage[r] and Consultant specialized in the Prevention of Financial Crimes. The main mission of my proposed endeavor is to help companies implement risk management plans and process control systems, factoring the various potential risks or events before they occur, allowing organizations to save money, protect their future, and increase profitability. Operational risk management has been playing a critical role in the banking industry for a long time. As such I would like to develop robust risk management plans to help companies establish procedures to avoid potential threats, diminish risk, prevent financial crimes identifying suspicion operations, minimize their impact should they occur, leading organization to achieve their goals.

My goal is to use my education in industrial engineering and financial management as well as my professional experience working in operational risk management and fraud at renowned banks . . . to improve financial institutions['] overall operations and the U.S. economy in general, enhancing security and productivity for its numerous business[es].

She further stated that she would perform the following services:

Operational Risk Administration: Operational risk assessment; Operational risk management reports; Development and implementation of strong risk management

policies and practices to support commitments to protect customers and society from financial crime; business continuity maintaining operation and growth through control procedures; Loss prevention and mitigation; Development and training in specific areas of commercial teams for financial services, quality, and project planning; Development and improvement of new segments to the extent of organizations (member segment, logistic regression, customer routes, writing of hallazgos, identification of operational risks, migration to the ISO 9001:2015 standard).

Organizational Development Management: Management of business exchange; Management of personal exchange from the inside to be able to transmit values and obtain efficiency in the processes; Strategic alignment of the organization; Market investigation and analysis; Studies of customer service perception and satisfaction; Coaching.

The Petitioner also supported the record with industry articles and reports, letters of recommendation, her academic credentials, and evidence of her professional achievements.

In a request for evidence (RFE), the Director informed the Petitioner that she had not submitted sufficient evidence to demonstrate that her proposed endeavor had national importance. The Director noted the evidence submitted but observed that the Petitioner's intent to provide consulting services to U.S. companies in the area of risk management did not appear to have the potential to sufficiently extend beyond her clients to impact the field more broadly. Thus, the Director requested additional evidence that may establish the specific proposed endeavor has national importance, as required.

In response to the Director's RFE, the Petitioner indicated that she proposed to work as the general manager of her own company, [REDACTED] and submitted a copy of the company's business plan. She indicated that her company would "provide consulting services and implement solutions that increase the productivity and competitiveness of the Company's clients by maximizing their existing resources," and further stated that the company "will be involved in the practice of helping organizations improve their performance levels by analyzing existing problems and developing clear improvement plans." The Petitioner, however, did not indicate how her duties would be divided between serving as general manager for her own company and performing risk management consulting services to other companies as she described earlier.

The Petitioner also submitted additional articles and reports, as well as new testimonial letters, in support of her eligibility.

In denying the petition, the Director concluded that although the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate that the Petitioner's work would impact the regional or national population at a level consistent with national importance. The Director determined that the Petitioner did not demonstrate that the benefits of her proposed U.S. employment would reach beyond her clients to affect her field or the United States more broadly.

On appeal, the Petitioner asserts that the Director's decision was erroneous. She asserts that her proposed endeavor has national importance because "her role as an Operational Risk Manager and Consultant will avert U.S. businesses from facing significant financial losses that will lead to their

future growth, in hand saving and injecting billions of dollars into our economy, enhancing our country's national security, and preventing numerous other [] that arise from white collar crimes." She also referred to her company's business plan and its job projections, noting that by its fifth year of operations, the company would create eleven direct jobs and therefore had significant potential to employ U.S. workers. She concluded by claiming that her proposed endeavor would have substantial positive economic effects on the U.S. economy.

As a preliminary matter, the Petitioner's initial description of the proposed endeavor did not include plans to establish her own company and serve as its general manager; instead, the Petitioner initially claimed that she intended "to use her expertise to consult numerous U.S. businesses." Whether the Petitioner would continue working as an independent risk management consultant or as the general manager of a newly established company is material because it addresses the scope of the proposed endeavor and whether it may have substantial positive economic effects. *See Dhanasar*, 26 I&N Dec. at 889-90. Because the Petitioner omitted any reference to founding her own risk management company and working as its general manager at the time of filing, her assertions in response to the RFE regarding her new startup company present a new set of facts that purport to materially change the petition and, thus, cannot establish eligibility. Because the new set of facts presented in response to the RFE constitute a material change to the petition, they cannot and do not establish eligibility, and we need not address them further. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Comm'r 1998).

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.

Beyond general assertions, the Petitioner has not demonstrated that the particular work she proposes to undertake offers original innovations that contribute to advancements in the field of risk management or otherwise has 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 consulting 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 the potential prospective impact of her proposed endeavor is evident because her company will provide valuable consulting services to financial institutions, private and corporate institutions, and government entities, and her client pool will reach across various

industries. She further refers to the five-year projections contained in her company's business plan and claims that the business plan and the figures therein demonstrate that her endeavor will have substantial positive economic impacts and has significant potential to employ U.S. workers. We note again, however, that the Petitioner's emphasis on appeal on the business plan she submitted for the first time in response to the Director's RFE is misplaced because it presents a new set of facts that cannot establish eligibility; thus, we need not address the substance of those assertions further. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 15 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

Turning to the Petitioner's endeavor as established at the time of filing, the proposed endeavor of operational risk management and consulting stands to benefit the Petitioner's 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 clients, as contemplated by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889. For example, although the Petitioner asserts that she will "avert U.S. businesses from facing significant financial losses," 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 risk management consultant for one or more companies rises to the level of broader implications within the field, as contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 889.

We acknowledge the Petitioner's submission of and reference to generalized publications, reports and articles regarding operational risk management, money laundering, terrorism, illicit finance, and an executive report regarding the value of STEM professional degrees. This evidence, however, does not concern her specific endeavor of providing operational risk management and consulting services to U.S. companies.² Although these documents indicate that the Petitioner's proposed work as an operational risk manager and consultant has substantial merit, in determining national importance, the relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake."³ Moreover, none of the documents submitted establish that the benefits of working as a risk management consultant for U.S. companies would extend beyond her clients in a manner that could be considered of national importance.

The record contains an expert opinion letter from a professor of finance at [REDACTED] University who concludes that the Petitioner's proposed work has national importance. But the professor does not base his conclusion on the national importance of the Petitioner's specific endeavor. Although he recites the Petitioner's career history and experience, his findings stem from the significance of the "Global Risk Management Consulting Services Market," and his observation that the Petitioner's "extensive knowledge in the areas of processes, operational risks-fraud, and controls" will greatly benefit the United States. While the professor's observations regarding the demand for risk management services within the financial sector are noted, he does not articulate how the Petitioner's

² While we may not discuss every piece of evidence submitted, we have reviewed and considered the record in its entirety.

³ The issue here is not the value of risk management consulting services as an effective means of preventing financial crimes, but rather whether the Petitioner's specific proposed endeavor as an operational risk manager and consultant rises to the level of national importance.

specific proposed endeavor of providing consulting services to individual companies will have significant potential to employ U.S. workers or substantial positive economic effects in an economically depressed area. The letter, therefore, does not establish the national importance of the Petitioner's specific proposed U.S. work. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable").

The Petitioner also submitted numerous support letters from former colleagues, who commend the Petitioner's professional history and her abilities in the area of risk management consulting. Her colleagues praise many of her personal characteristics and her record of achievements; however, none of these letters explain the nature of the impact of her achievements nor do they elaborate on how her risk management consulting services affected or influenced others in the field or otherwise elevated the Petitioner above her peers.

Finally, we note the Petitioner's statements on appeal regarding her expertise and prior career accomplishments. 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 clients, as required by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889. Moreover, the Petitioner's claim on appeal that "risk management and compliance are vital for all industry verticals" and that she is well-qualified to provide such services 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 *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 clients to impact the risk management industry or the U.S. economy more broadly at a level commensurate with national importance. Her intention to work as an independent consultant appears to benefit potential companies and clients that contract with her. However, the record does not establish how working as an independent consultant in the field of risk management may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. Because the record does not establish how the Petitioner's endeavor, as established at the time of filing, may have national or even global implications within a particular field, broader implications, or other substantial positive economic effects, it does not establish the proposed endeavor has national importance. *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.