



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

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

In Re: 28963191

Date: DEC. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources manager, seeks classification as an individual of exceptional ability in the sciences, arts or business. *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 Petitioner qualified for classification as an individual of exceptional ability but that the Petitioner 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial

merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as an individual of exceptional ability. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner described the endeavor as a plan “to work as a [h]uman [r]esources [c]onsultant in the U.S. with a special focus and emphasis on the areas of strategic HR planning, internal consulting, labor and union relations, personnel administration, training and organizational development.” The Petitioner also asserted that she “intend[s] to set up a consulting company and generate jobs and contribute to the nation’s growth.” However, the Petitioner did not elaborate on the location in which her consulting company would operate, the number of employees she intended to hire to work for her company, the wages she would pay those workers, and other details regarding her proposed endeavor. The Petitioner further stated that she would “share her vast knowledge and influence through events, trainings and impact on young people and adults who may be dedicated to the same or associated professional crafts across the U.S.” The Petitioner also referenced generalized information regarding human resources consulting.

The Director acknowledged that the Petitioner provided generalized information regarding human resources consulting and her qualifications. However, the Director observed that “the [P]etitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects.” The Director also noted that the record does not establish the proposed endeavor will have “broader implications, or national or global implications within a particular field,” referencing *Dhanasar*. *See id.* at 889-90. The Director concluded that “the [P]etitioner has not established that the proposed endeavor is of national importance.” The Director further stated that “the record established that the [P]etitioner met the second [*Dhanasar*] prong” but neither of the first and third prongs, without specifically addressing whether the proposed endeavor has substantial merit, which is also required by the first *Dhanasar* prong. *See id.* at 889-91.

On appeal, the Petitioner asserts that “ample evidence was provided with the initial petition and [request for evidence (RFE) response] to demonstrate that the Petitioner’s proposed endeavor was correctly stated and that it has national importance.” The Petitioner also reiterates information from various publications in the record regarding human resources consulting in general. The Petitioner characterizes the Director’s RFE as “acknowledging that the Petitioner submitted various articles to

show national importance, but then asks for documentary evidence that establishes the endeavor's national importance, thus implying that the various articles acknowledged by the [RFE] itself did not show the merit of the endeavor."

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 *Matter of 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.

Contrary to the Petitioner's assertions on appeal, the Director's RFE did not "acknowledg[e] that the Petitioner submitted various articles to show national importance." Instead, the Director's RFE acknowledged that the Petitioner "submitted [i]ndustry reports and articles to establish the growth and need for HR consultants." The Director noted that "[t]he evidence submitted may show that there is a need in the United States for More HR consultants; however, there is a labor certification process in place to address shortages in fields." The Director explained that "[s]imply working in a field where there is a shortage falls short of showing that the [Petitioner's] proposed endeavor has a prospective national impact." Accordingly, the Director requested, in relevant part, "[d]ocumentary evidence that supports the [P]etitioner's statements and establishes the endeavor's national importance," given that the evidence initially submitted in support of the Form I-140, Immigrant Petition for Alien Workers, did not satisfy that requirement.

As noted above, 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 *id.* at 889. The various publications in the record regarding human resources consulting in general do not discuss the Petitioner, the specific endeavor that the Petitioner proposes to undertake, and how the specific endeavor 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 various publications in the record regarding human resources consulting in general do not address the Petitioner, her specific proposed endeavor, and how the endeavor may have national importance, they are immaterial to determining whether the proposed endeavor may have national importance.

The Petitioner's proposed endeavor of founding and operating a human resources consulting company appears to benefit the Petitioner, as the owner and operator of the consulting company, and the potential clients who would request and receive her consulting services. However, the record does not establish how the proposed endeavor may have national importance. Although the Petitioner asserts that her consulting company would "generate jobs," the record does not establish where the Petitioner's consulting company would operate, the number of workers her company would employ, the wages she would pay her employees, and other information that may establish how the proposed endeavor may have "significant potential to employ U.S. workers or . . . other substantial positive

economic effects, particularly in an economically depressed area.” *Id.* Likewise, the record does not establish where the Petitioner’s company’s clients would operate, the number of workers those clients would employ as a result of the Petitioner’s company’s human resources consulting services, the wages the Petitioner’s company’s clients would pay those workers, and other information that may establish indirect economic benefits the proposed endeavor may have. *See id.* Although the Petitioner asserts that she would share her human resources knowledge by providing consulting services, training, and generalized “events,” the record does not establish how the knowledge the Petitioner would share to unspecified clients, trainees, and other audiences may have the type of national or even global implications within the field of human resources, such as those resulting from certain improved manufacturing processes or medical advances, contemplated by *Dhanasar*. *See id.*

In summation, we have reviewed the record in its entirety; however, 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) (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

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.