



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

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

In Re: 29022342

Date: DEC. 13, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding the record did not establish the Petitioner's eligibility for a national interest waiver under the *Dhanasar* analytical framework, as a matter of discretion. 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, 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.

## II. ANALYSIS

The Director determined that the Petitioner qualifies for the EB-2 classification as a professional holding the foreign equivalent of an advanced degree. The remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework.

As a preliminary matter, the Petitioner alleges 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 1 USCIS Policy Manual, E.4(B), <https://www.uscis.gov/policy-manual>. While she 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.

We first conclude that the Petitioner has presented insufficient and inconsistent evidence regarding the nature of the occupation in which she seeks employment in the petition, and the proposed endeavor that she intends to pursue. This is important because to demonstrate that the Petitioner is eligible for a national interest waiver she must, among other things, provide evidence sufficient to show that her specific proposed endeavor (1) has both substantial merit and national importance and (2) she is well positioned to advance it under the *Dhanasar* analysis. See generally 6 USCIS Policy Manual F.5, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

She initially indicated in her Application for Alien Employment Certification, Form ETA-750 Part B, and in part 6 of the petition that she will be employed as a business operation specialist, performing duties such as “work[ing] with a manager or company administrator for improving operational efficiency, stating that her specific work falls within one of the Business Operations Specialists, All Other occupations which may be viewed at <https://www.onetonline.org/link/summary/13-1199>.

She also offered a business plan with the petition for the startup of her own company, G-, and shared that her “ultimate goal is to turn [G-] into the perfect ally for U.S. manufacturers and wholesalers of the [electrical material, plumbing fixtures, and hardware] industries that wish to enter new markets abroad or expand their international trade.” She noted that G- will also offer to services to Caribbean-based companies who wish to have assistance with “their plans to sell to U.S. clients, develop reseller chains or pursue trade agreements.”

The Director issued a request for evidence (RFE) noting that while the Petitioner intends to offer international trade and consulting services for U.S. and foreign companies, she had not adequately communicated the nature of her specific prospective endeavor. The Director asked for a detailed description of the Petitioner’s proposed employment, supported with documentary evidence. But the Petitioner did not sufficiently address this aspect. In the RFE response, she newly contends that she will not only operate her own business, G-, but she will also seek direct employment with U.S. companies. She explains that her “proposed endeavor involves working for any company in need [of] superior business administration, international trade, marketing and logistics.” The Petition also presented

alternative information about the occupation in which she will be employed by submitting the O\*NET summary report for “General and Operations Managers,” which may be viewed at [https://www.onetonline.org /link/summary/11-1021.00](https://www.onetonline.org/link/summary/11-1021.00). She contends that this report and other articles provided in support of the petition show how she “is developing a business in the United States through which [she] will leverage [her business]. . .”

As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we consider information about her current positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework. In the RFE response she states she is currently “working as Spanish Translator & Interpreter” at a charter school in Michigan, noting that her “main responsibilities in this role include bridging the language gap due to language limitations, assisting with [p]arent-[t]eachers conferences, behavior tracking for Spanish speakers, and providing main office administrative assistance.” She also claims to be engaged as a university professor where she “teaches at the master’s and specialization levels.”

In addition, she provides documents about another company, S-, indicating that she is partial owner of this business, and presents a business plan reflecting that this firm will be “dedicated to the remodeling of [real estate],” offering aluminum and glass carpentry, bathroom remodeling, finish basement, drains, excavations in general, plumbing, [and] electricity.” But she does not further delineate the specific role she will play within this company’s business operations.

The Director denied the petition in part, determining the Petitioner did not provide evidence that would adequately demonstrate the nature of her specific endeavor. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889. The burden is on the Petitioner to provide sufficient information and evidence relating to their proposed endeavor in order to show its national importance. While the Petitioner offers material that collectively presents a range of diverse activities that she *might* prospectively focus on (e.g., international trade consulting, marketing and sales, real estate remodeling, teaching, language translation and interpretation, and general business management activities), she does not sufficiently describe the specific prospective occupation or proposed endeavor that she will focus on to illustrate the nature of the work that she will perform during her day-to-day work activities. The Petitioner must resolve these inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In her appeal brief, the Petitioner incorporates many of the same narrative explanations that she offered to the Director regarding her contention that her proposed endeavor is of national importance, which were considered by the Director when denying the petition. She does not, however, provide any new evidence or arguments which overcome the Director’s determinations on appeal. For instance, she reaffirms her intention to pursue some of the activities that she identified at various stages of this proceeding, including operating her own international trade consulting business and seeking work with “any company in need of her superior business administration and management skills.” But she did not provide a consistent, detailed description explaining the manner through which she will prospectively deliver these services, supported by documentary evidence as requested by the Director in the RFE. “Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition].” 8 C.F.R. § 103.2(b)(14). Without more, the record does not offer evidence

sufficient to translate *how* her specific work stands to sufficiently impact U.S. interests or the relevant commercial trade industries more broadly at a level commensurate with national importance.

On appeal, the Petitioner contends that she submitted evidence sufficient to demonstrate the national importance of her proposed endeavor and asserts the Director's determination to the contrary indicates that he did not give "due regard" to the evidence she submitted in support of the petition. Based on our de novo review, the Director's denial encompassed well-founded explanations about the deficiencies in the Petitioner's evidence. We conclude the record reflects that the Director carefully considered the Petitioner's evidence in analyzing the eligibility factors in this case. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has not met her burden here.

Therefore, we adopt and affirm the Director's decision as it relates to this prong. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

Because the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, she has not demonstrated eligibility for a national interest waiver, as a matter of discretion. *See 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). Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding *Dhanasar's* second and third prongs. *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).

**ORDER:** The appeal is dismissed.