



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

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

In Re: 28559922

Date: DEC. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources and marketing communication specialist, 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. 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.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor’s degree. A United States bachelor’s degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master’s degree. 8 C.F.R. § 204.5(k)(2).

Profession is defined as of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.¹ 8 C.F.R. § 204.5(k)(3).

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.” Section 203(b)(2)(B)(i) of the Act. 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).² *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion³, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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 foreign national 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

¹ Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

² In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

³ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

II. ANALYSIS

The Petitioner proposes to work in the United States as a human resources and marketing communications specialist through her company, [REDACTED]. The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

We reviewed the entirety of the record and have considered the Petitioner's eligibility for the national waiver. In the decision denying the petition, the Director acknowledged that the Petitioner's proposed endeavor had substantial merit but determined that the Petitioner had not established the national importance of her proposed endeavor. The Director also concluded that the Petitioner had not demonstrated that she is well positioned to advance the proposed endeavor and on balance, that it would be beneficial to the United States to waive the requirement of a job offer and thus of a labor certification. The Director also stated that the Petitioner had not demonstrated that her undertaking has the potential to have "broader implications to the overall field to establish its national importance . . . that extend beyond her company to impact the field more broadly."

On appeal, the Petitioner argues that the Director's decision contained errors of law and fact. For example, the Petitioner contends that the Director arbitrarily and capriciously ignored the opinion of the industry expert which emphasized the national importance of the Petitioner's proposed endeavor. The Petitioner also highlights the evidence submitted in support of the petition and in response to the Director's request for evidence (RFE) to underscore the sufficiency of the submitted evidence.

The Petitioner stated in her personal statement, "through my company, I provide customized analysis and project management services related to the area of Human Resources and social/organizational communications to small and medium U.S. companies that operate in the fields of marketing, communications, and education . . . [a]s an HR Marketing Communications Specialist, I focus on the administrative matters of each company, including personnel training, evaluation, and staff development."

The Petitioner also submitted a business plan where she explains, "[REDACTED] primarily targets business clients, new entrepreneurs, and other interested parties. The company focuses on Southwest Florida with the purpose of gradually expanding its operations to reach the entire state." In addition, the business plan also contains financial forecasts and projections, a personnel plan, and a discussion of the Petitioner's work experience. Regarding future staffing, the Petitioner's business plan anticipates that [REDACTED] will hire eight employees by the end of year five. Furthermore, the Petitioner's plan offers sales projections of \$202,720 in year one to \$547,254 in year five.

The Petitioner also provided expert opinion letters from Dr. V-L-,⁴ an associate professor of marketing at [REDACTED], and Dr. K-W-, an associate professor of quantitative management at [REDACTED]. Drs. V-L- and K-W- contend that the Petitioner's work is of national importance. In particular, Dr. V-L- states that the Petitioner "specializes in organizational communication with an in-depth knowledge in human resource management. Her work is in demand and has national importance in the field of human resources. Through her exceptional track record of experience as a Human Resources Director, she has demonstrated that she is fully capable and well positioned to advance the proposed endeavor of applying her expertise and skills in her field to strengthen businesses in the United States."

Similarly, Dr. K-W- asserts that the Petitioner "will provide the nation the advantages of female business as a co-owner of [REDACTED]. For good reason, entrepreneurs are among the most avant-garde and thought-provoking members of society."

The Petitioner also submitted a letter of intent to continue employment from [REDACTED]. [REDACTED] The company states that they contracted the Petitioner and her company's services to provide communication strategies and organizational development in order to improve their labor practices and internal management structure.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Further, the relevant question is not the importance of the field, 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Petitioner's work. While the Petitioner's statements reflect her intention to work in the United States as a human resources and marketing communications specialist through her company, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. 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.

Though we acknowledge the Petitioner's assertions and the evidence she submitted on appeal, we conclude that the Petitioner has not shown her proposed endeavor stands to sufficiently extend beyond her employees and her company's customers to enhance societal welfare on a broader scale indicative of national importance.

⁴ Names withheld to protect individuals' identities.

The first prong's focus is on the proposed endeavor itself and not the petitioner. *Id.* The Petitioner must establish that her specific endeavor has national importance under *Dhanasar*'s first prong. The Petitioner has not shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. Specifically, the Petitioner has not demonstrated that her company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that her company has growth potential, she has not presented evidence indicating that the benefits to the regional or national economy resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her endeavor stands to "create employment opportunities in the United States," she has not offered sufficient evidence that the area where her company operates is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, tax revenue, or business activity.

The Petitioner claimed that her proposed endeavor "has had a far reach" in the United States by "supporting medium-sized and small businesses to improve their effectiveness, efficiency, and performance." The Petitioner further elaborated that she has been "providing guidance on change management strategies, developing communication plans, addressing resistance to change, and supporting implementing of new initiatives or restricting efforts." To illustrate further, the Petitioner discussed the benefits of the HR department and HR professionals who hold management positions, highlighting how her endeavor will help promote healthy work environments where employees feel safe, valued, and properly supported and will contribute to the success of businesses nationwide.

Although the Petitioner claimed that she would create jobs and improve businesses, the evidence she provided does not support such a conclusion. While her endeavor may directly impact the communication strategies and organizational development of a particular company such as [REDACTED], the evidence does not suggest how these benefits would reach the field of human resource management/communication overall or have an impact so broad as to affect the economy or create a significant number of jobs.

We acknowledge that the field of human resource is important; however, this is insufficient to establish the national importance of the proposed endeavor. As previously mentioned, 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." *Id.* at 889. The Petitioner has not sufficiently explained how helping the individual companies and clients that hire her would result in impact on a broad scale rising to the level of national importance. For instance, the Petitioner has not provided evidence that increasing the profitability and enabling the expansion of a particular company would affect the GDP. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision,

the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. 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 established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.