



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

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

In Re: 23791804

Date: FEB. 2, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a banker, seeks second preference 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that while the Petitioner is eligible as a member of the professions holding an advanced degree, the record did not establish that she qualifies for or otherwise merits 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 qualifies as an advanced degree professional or a noncitizen of exceptional ability, they must then demonstrate that they merit a discretionary waiver of the job offer requirements “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<sup>1</sup>, grant a national interest waiver if the petitioner demonstrates that:

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<sup>1</sup> *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 Petitioner is a banker who proposes to work in the United States in the area of finance. Evidence in the record shows that she possesses a bachelor's degree in legal and social science which is the equivalent of a bachelor's degree issued by an accredited institution in the United States, and that she has more than five years of progressive, post-baccalaureate experience working in the banking field. We therefore agree with the Director that she qualifies for the EB-2 classification, and the sole issue on appeal concerns her request for a national interest waiver.

### A. Substantial Merit and National Importance

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.

In his decision, the Director determined that because the Petitioner's description of her proposed endeavor lacked specificity and consistency, he was unable to conclude that it was of substantial merit. On appeal, the Petitioner restates that she will continue working as a banker in the field of finance, and will "work with accounting firms, businesses and/or corporations to provide expert financial advice." She also refers to her "Professional Plan and Statement" submitted in response to the Director's request for evidence ("RFE"), which she asserts includes a detailed description of her proposed endeavor. That document indicates that she intends to work as a financial advisor, working in either the private banking industry or in financial planning and advice, in the  Florida area.

However, instead of providing details about what she plans to do in such a position, the document describes broad activities that she could do based upon her past experience. For example, she asserts that her former clients in Brazil present "a wide potential client base that can bring substantial capital in the U.S. both in the form of foreign direct investments and through the investment in securities issued by U.S. based companies." But this is a statement of a possibility, not a description of a specific endeavor that *Dhanasar* notes is the focus of the first prong analysis. *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner has not provided sufficient information to establish that her proposed work as a banker or a financial advisor has the potential to create a significant economic impact or would otherwise be of substantial merit.

The record also lacks sufficient information to demonstrate that the Petitioner's proposed endeavor is of national importance. Similar to the analysis above, the lack of detail regarding the Petitioner's proposed endeavor provides insufficient evidence to show that her work would have broader implications within the banking or financial advisory fields, or would have substantial positive economic effects. *Id.* at 889-890. As the Director noted in his decision, the Petitioner has not established that her employment by a bank for a financial advisory firm would potentially have implications beyond that employer and the clients she would serve. While the Petitioner makes several

claims regarding the impact of her work on appeal, including increasing Brazilian investment in the United States, helping close a skilled workforce gap, and reducing the unemployment rate, she has not submitted sufficient detail regarding her proposed endeavor to support a link between her work and these positive outcomes.

For the reasons given above, the Petitioner does not meet the requirements of the first prong of the *Dhanasar* analytical framework.

## B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the noncitizen's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The Petitioner does not meet the first prong of the *Dhanasar* framework, and she therefore is not eligible for and does not merit a waiver of the EB-2 classification's job offer requirement. Nevertheless we will briefly consider whether she has shown that she is well positioned to advance her proposed endeavor.

The record indicates that the Petitioner earned a Bachelor's degree in legal and social science, and later a post-graduate certificate in constitutional law. Although the evidence indicates that she was initially involved with the preparation of some legal documents in her employment in Brazil, she does not provide any specifics regarding legal work she would perform in the United States. So she has not shown that her education is related to or would help her advance her proposed endeavor.

Regarding her work experience, the Petitioner submitted several letters from former colleagues which state that she "developed new techniques" in the banking field. But none of the letters describe these techniques to any extent, nor do they provide details regarding how they were used by the Petitioner. Some also mention that she contributed to the "Pobj prize" which is stated to have been received by the bank branch that employed her, but the record does not include evidence of this prize, information about it, or details about the Petitioner's role. While the letters do confirm that she was employed by the bank and worked on investment strategies for wealthy individuals, among other duties, they are insufficient to establish a record of success.

Further, while the evidence indicates that the Petitioner has obtained some certifications in the investment field in the United States and is working towards others, these do not show that she was well-positioned to advance her endeavor at the time her petition was filed. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). For these reasons, the Petitioner has not established that she is well positioned to advance her endeavor, and does not meet the second prong of the *Dhanasar* analysis.

### III. CONCLUSION

The Petitioner has not established her eligibility under either the first or second prong of the *Dhanasar* framework, and she is thus not eligible for and does not merit a national interest waiver. While she asserts on appeal that she meets the third *Dhanasar* prong, we will reserve that issue.<sup>2</sup> The appeal will be dismissed for the reasons state above.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).