



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

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

In Re: 23349392

Date: JAN. 31, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing professional, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner merited, as a matter of discretion, a national interest waiver of the EB-2 classification's job offer requirement. 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.

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. [If a doctoral degree is customarily required for the specialty, the non-citizen must a United States doctorate or a foreign equivalent degree. (delete if doctorate not an issue)] 8 C.F.R. § 204.5(k)(2).

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<sup>1</sup>, 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 in his decision that the Petitioner established her eligibility as a member of the professions holding an advanced degree, and we agree.<sup>2</sup> The issue on appeal is whether she meets the requirements of the three prongs of the *Dhanasar* analytical framework and otherwise merits a national interest waiver as a matter of discretion.

The Petitioner is a marketing professional who holds a degree in tourism and hotel management and has worked in the tourism industry for many years. She initially indicated that her proposed endeavor would be to work with U.S. and multinational companies to design marketing strategies and identify opportunities for business development. She also stated that as a part of this endeavor she would restructure internal teams, adapt new technology, and expand market opportunities. The Petitioner did not identify a particular type or size of company she intended to work with, nor did she specify a geographic location in which she would work.

In response to the Director's request for evidence (RFE), the Petitioner submitted a new statement in which she proposed to work as an entrepreneur and CEO of her own company. She indicated that this company would primarily work with entrepreneurs and small businesses in the [REDACTED] Florida area to help build and execute their marketing strategies. But the Petitioner did not indicate how her duties would be divided between managing the new company and performing the marketing duties she described earlier.

The purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), 103.2(b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Here, the Petitioner made significant changes to her proposed endeavor in responding to the RFE that changed its nature and structure from employment as marketing professional with a U.S. company to working as an entrepreneur and CEO of her own company. As the *Dhanasar* framework requires an analysis of the substantial merit and national importance of the specific endeavor proposed by an individual, such a change is material to their eligibility for a national interest waiver. In addition, a petitioner must meet eligibility requirements for the requested benefit at the

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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).

<sup>2</sup> While the Director erred by stating that the Petitioner holds an advanced degree, the record establishes that she holds the foreign equivalent of a bachelor's degree from an institution of higher education in the United States, and that she has at least five years of progressive, post-degree experience in her specialty.

time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's plans to establish and direct a new company formed after the filing date of her petition cannot retroactively establish eligibility.

#### A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889.

As noted, the Director notified the Petitioner in his RFE that she had not established that her original proposed endeavor was of national importance. The record initially included articles about marketing managers and consultants in general, and also about the tourism industry, but this evidence did not concern her specific endeavor of designing market strategies for U.S. companies. 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 potential impact of "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. We also indicated 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.*

The Petitioner's response to the RFE did not include additional evidence in support of her initial proposed endeavor, but proposed a new endeavor which constituted an impermissible material change to her petition. But even if the Petitioner had originally submitted evidence in support of her proposal to start and manage her own business with her initial filing, the additional evidence submitted with her RFE response does not sufficiently establish the national importance of this endeavor.

On appeal, the Petitioner asserts that her proposed endeavor will "generate substantial ripple effects upon key commercial and business activities," and that it is a "vital aspect of U.S. companies' public relations and advertisement." She also asserts that by helping U.S. companies in foreign markets, and particularly in Brazil, her endeavor will create U.S. jobs. However, as the Director noted in his decision, the evidence does not show that her company and its activities would have economic impacts beyond the clients it would serve such that it will broader implications for businesses in the United States.

We stated in *Dhanasar* 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. The Petitioner states that her business would be located in [REDACTED] Florida, in a designated HUBZone, and the business plan includes projections that the company would employ 40 workers and achieve revenue of nearly \$3 million within its first five years of operation. Regarding the business' proposed location, the Petitioner indicates that a HUBZone is a historically underused business zone located in either a qualified census tract, a county below certain income and unemployment standards, or lands within

Indian reservations, but does not specify in which of these her business would be located.<sup>3</sup> Further, the copy of the map provided by the Petitioner indicates that only portions of [ ] lie within a designated HUBZone. As she has not provided a specific physical location for her proposed company, or provided any evidence of her intention to purchase or lease office space at a particular location, she has not shown that it would be located in an economically depressed area.

In addition, even if the business were to be physically located within an economically depressed area, the employment and revenue projections included in the Petitioner's business plan are not supported by details showing their basis or an explanation of how those projections will be realized. And while the business plan projects the employment of 40 workers within five years, the Petitioner has not established that this addition to the area's workforce would be of sufficient significance to rise to the level of national importance.

The Petitioner has not demonstrated that her proposed endeavor would be of national importance, and she therefore 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 individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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. *Id.* at 890.

As the Petitioner has not established that she meets the first prong of the *Dhanasar* framework, she is not eligible for and does not merit a national interest waiver. However, we will briefly discuss whether she is well positioned to advance her proposed endeavor. We first note that her degree in tourism and hotel management is not related to her proposed endeavor of designing market strategies for U.S. businesses. In addition, although she claims to possess years of experience in the field of marketing, this experience is not well documented in the record. For instance, she claims to have worked as a marketing and operations director for [ ] Brazil from May 2003 to October 2010, but the dates of her employment do not match those stated in a letter from the General Director of this company. Specifically, he indicates that he began working for [ ] Brazil in 2006, approximately three years after the Petitioner states she began her employment there, but that he invited her to take the marketing and operational director position. Other letters from clients focus on the Petitioner's ability to plan travel activities and do not provide details regarding her work as a marketing professional. This evidence does not establish that she is well positioned to advance her proposed endeavor.

### 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

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<sup>3</sup> The regulations regarding the HUBZone Program at Title 13 C.F.R. § 126.103 list seven different types of qualifying areas, only some of which have requirements related to income and unemployment.

asserts on appeal that she meets the third *Dhanasar* prong, we will reserve that issue.<sup>4</sup> The appeal will be dismissed for the reasons state above.

**ORDER:** The appeal is dismissed.

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<sup>4</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).