



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

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

In Re: 26244354

Date: JUL. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a general and operations manager, 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 although the Petitioner established her eligibility for EB-2 classification as a member of the professions holding an advanced degree, she did not demonstrate 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, under section 203(b)(2) of the Act. An “advanced degree” is defined, in part, as any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2).

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,” *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,¹ 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.²

II. ANALYSIS

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.³ Therefore, the primary issue before us on appeal is whether the Petitioner has established that a discretionary waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Proposed Endeavor

At the time of filing, the Petitioner provided a “Professional Plan & Statement” in which she indicated that she intends to advance her career as a general and operations manager in the fields of business and financial systems, “helping American companies make strategic decisions, and thus reducing their organizational risks.” Specifically, she stated that she will continue her work as a regional director for [REDACTED], managing [REDACTED] franchisees. The Petitioner’s Professional Plan & Statement provides:

Should the present petition be approved, I will continue to apply my management and financial skills for the development and growth of the [REDACTED] brand, both in the United States and in other market economies

Additionally, I will also offer external management services to small and medium-sized companies in the U.S. which require the services and management of an operations executive, but are unable to employ someone in that role on a full-time basis due to their internal structure or the current financial condition of their business.

. . . .

To top it all off, I will launch my own company in the United States - which will serve as a series of healthy fast-food restaurants.

The Petitioner’s initial submission also included an “Impact Analysis” for the company she intends to create in the quick service restaurant sector, described as “a chain of healthy fast-food restaurants that help the U.S. fight obesity.” The Impact Analysis indicates she intends to open 12 locations per year to reach 60 locations by the end of the fifth year. It includes industry and market analyses, business

¹ 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).

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner provided an official academic record showing that she has a master’s degree completed in the United States and therefore met the initial evidence requirement for this EB-2 classification under 8 C.F.R. § 204.5(k)(3)(i)(A).

strategies, financial forecasts and projections, and a description of the company's proposed service offerings and personnel. With respect to future staffing, the Impact Analysis projects that the Petitioner's restaurant business would hire 862 employees in the first five years of operations, pay over \$5,485,188 in payroll taxes, and achieve total revenues of \$12,020,400 in its first year and \$76,680,000 by its fifth year.

In response to the Director's request for evidence, the Petitioner submitted an updated Professional Plan & Statement, which states her intention "to apply my management and financial skills for the development and growth of the [redacted] brand" and to act as an operations management consultant for "large companies in the United States that are engaged in business in foreign markets, including Latin America."

B. Substantial Merit and National Importance

The first prong of the *Dhanasar* framework focuses on the specific endeavor the individual proposes to undertake and requires the Petitioner to establish both the substantial merit and national importance of the endeavor. 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. The Director concluded that the Petitioner established that her proposed endeavor has substantial merit but determined she did not meet her burden to establish the national importance of the endeavor.

Specifically, the Director determined that the Petitioner had not shown how her proposed endeavor would have broader implications within her field that would reach beyond clients utilizing her services, or that it would broadly enhance societal welfare. In this regard, the Director observed that claims that the proposed endeavor would contribute to "helping American companies make strategic decisions, and thus reducing their organizational risks" did not appear to extend "beyond an organization and its clients to have national benefits."

The Director further observed that the record did not demonstrate that the proposed endeavor has significant potential to employ U.S. workers, would impact an economically depressed area, or would have benefits to the regional or national economy that would reach the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner maintains that the Director did not give due regard to her initial and updated Professional Plan & Statement; recommendation letters; industry reports and articles demonstrating the national importance of her proposed endeavor; evidence of her professional experience and accomplishments; and the staffing and income projections in her company's Impact Analysis. For the reasons provided below, we agree with the Director's determination that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.⁴

⁴ While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

Regarding the Petitioner's fast-food restaurant business, the Impact Analysis asserts that her company will strive "to become a leader in the fast-casual healthy dining segment of the fast-food industry." It emphasizes the high level of obesity in the United States, and the role fast-food consumption plays as a contributor to obesity-related health problems. In support of her claim that the proposed endeavor has national importance consistent with the first prong of the *Dhanasar* framework, the Petitioner provided links to published articles and reports, including from the American Medical Association and the Center for Disease Control and Prevention, addressing those obesity-related health concerns. We do not question the significance of these issues and their direct bearing on public health in the United States.

When determining national importance, however, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Matter of 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.*

Based on the Impact Analysis contained in the initial submission, the Petitioner has not shown how the healthy fast-food services she intends to provide to her restaurant patrons would have broader implications in the quick service restaurant industry. She broadly states that her chain of healthy fast-food restaurants will "help the U.S. fight obesity," but the record does not provide adequate support for a determination that her specific proposed endeavor will have such a wide-reaching impact. 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. Nor has she demonstrated that her work would broadly enhance societal welfare at a level commensurate with national importance. While the Petitioner proposes to perform work in an area of national importance, this is not necessarily sufficient to establish the national importance of the specific proposed endeavor.

We also 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 will be understood to have national importance." *Id.* at 890. The job creation and revenue projections included in the Petitioner's Impact Analysis are not supported by details showing their basis or an explanation of how those projections will be realized.

Even if the Petitioner had established a sufficient basis for these projections, they would not establish the national importance of the proposed endeavor. While the projected income statement indicates that the Petitioner's healthy fast-food business has growth potential, it does not demonstrate 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, the Petitioner has not offered sufficient evidence identifying the area where her company will operate; that it is economically depressed; that her company 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 or business activity.

Next, we have considered evidence related to the Petitioner's proposed activities in the business and financial services field as a general and operations manager for [] and a consultant. The Petitioner

maintains on appeal that her work as a general and operations manager “will enhance the revenue of U.S. companies, thus elevating their productivity patterns and market growth” and “will improve the United States’ business sphere, and further position the nation as a business hub within the global economy.” However, these statements are not supported by financial projections. Although the proposed endeavor may benefit the client companies that engage the Petitioner’s services, the record does not sufficiently show that such benefits, either individually or cumulatively, would rise to the level of national importance.

We have also considered the Petitioner’s claims that there are “steep shortages in the U.S. of professionals with her profile in the field.” But she has not suggested that her proposed endeavor would lessen the shortage of general and operations managers on a scale rising to the level of national importance.

Further, the Petitioner provided articles and reports discussing the role of business managers and development professionals in the domestic and global economy and the value of immigrants and immigrant entrepreneurs as drivers of U.S. new business growth. The record also contains information about U.S.-Brazil economic and trade relations, and the economic benefits of international trade and foreign direct investment in the United States. Here, the Director concluded that the submitted articles and government reports establish the Petitioner’s endeavor has substantial merit. In determining national importance, however, the relevant question is not the importance of the industry 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. The Petitioner must still demonstrate the potential prospective impact of her specific proposed endeavor.

Moreover, in her personal statements and appellate brief, the Petitioner has placed considerable emphasis on her academic training in business administration and her professional experience in the field. The record also contains recommendation letters from her current and former employers in the United States and Brazil. While important, the Petitioner’s expertise acquired through her academic and professional career primarily relates to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar*’s first prong. A determination regarding the claimed national importance of a specific proposed endeavor cannot be inferred based on the Petitioner’s past accomplishments, just as it cannot be inferred based on general claims about the importance of a given field or industry.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from an associate professor at [redacted] University. Much of the letter discusses the Petitioner’s work experience in general and operations management. The professor concludes that that the Petitioner’s work “will indisputably benefit U.S. employers and the U.S. economy as a whole” as she is “a professional of great value in her field, with deep expertise in the areas of strategic business development and operational management.” However, the author does not offer any analysis of the Petitioner’s business plan; the specific proposed endeavor and its prospective substantial economic impact; or the broader implications of the proposed endeavor in the business and financial services field or quick service restaurant sector. In fact, the author appears to be under the impression that the Petitioner’s proposed endeavor will be limited to general and operations management and consulting; he does not discuss the restaurant business model described by the Petitioner in the Impact Analysis.

We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

For the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Because the Petitioner has not established her proposed endeavor has national importance, she is not eligible for a national interest waiver under the *Dhanasar* analytical framework. Although the Director also concluded that the Petitioner had not established her eligibility under the third prong of the *Dhanasar* framework, detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve those issues and will dismiss the appeal as a matter of discretion.⁵

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.

⁵ See *INS v. Bagamashad*, 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); 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).