



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

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

In Re: 27449182

Date: JUL. 21, 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 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 the record did not establish that it would be in the national interest to grant the Petitioner a discretionary waiver of the 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 a member of the professions holding an advanced degree 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. 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 discretion¹, 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. ADVANCED DEGREE PROFESSIONAL

The Director's decision does not directly address the Petitioner's eligibility for EB-2 classification as a member of the professions possessing an advanced degree and instead focuses solely on her eligibility for a discretionary waiver of the job offer requirement under the *Dhanasar* framework.

The Petitioner provided: (1) an official academic record from a Brazilian university showing that she was awarded a bachelor's degree in business pedagogy (*Bacharel em Pedagogia*) in December 2010 after completing five years of post-secondary study; (2) an official academic record documenting her completion of a one-year post-graduate specialization in management and human resources; (3) an evaluation of her educational credentials; and (4) a letter from her Brazilian employer documenting her work experience in the areas of management and human resources since 2010.

The evidence demonstrates that the Petitioner holds the foreign equivalent of a bachelor's degree, followed by five years of progressive post-baccalaureate work experience in her specialty, and therefore has an advanced degree as defined at 8 C.F.R. § 204.5(k)(2). Accordingly, she established her eligibility for the requested EB-2 classification.

III. NATIONAL INTEREST WAIVER

The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner's proposed endeavor, as described in her statements and a five-year business plan, is to manage a Florida limited liability company providing consulting services in the corporate training sector. According to the submitted business plan, the Petitioner's company will offer its business clients several one-day training workshops that will accommodate groups of 20 to 30 people per session and are "designed to build more humane organizational environments where connections between leaders, employees, partners, and customers are based on empathy, understanding and respect for diversity." The record reflects that the Petitioner has over 10 years of experience in management, human resources, and corporate training and development, and that she has engaged in a similar endeavor in Brazil.

The Director concluded that, although the Petitioner established the substantial merit of her proposed endeavor, and that she is well-positioned to advance it, she had not demonstrated the endeavor's

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).

national importance, and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

On appeal, the Petitioner asserts that the Director ignored or mischaracterized credible and probative evidence, misapplied established legal standards for adjudicating national interest waiver petitions, and inflated the standard of review above the preponderance of the evidence standard. For the reasons provided below, we agree with the Director's determination that the Petitioner did not establish the national importance of her proposed endeavor. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

The first prong of the *Dhanasar* analytical framework, 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.

The record includes information from the U.S. Department of Labor which describes the duties and occupational outlook for training and development specialists and general and operations managers. The Petitioner also submitted industry reports on the job training and business coaching industries, as well as media and government reports that discuss the value of investment in employee engagement and professional development, the history and future of the operations management field, the global talent shortage for high-skill positions, the challenges of attracting and retaining talented managers, and other articles related to the operations management field and the impact of employee training and development programs on business outcomes. Based on this evidence, the record supports the Director's determination that the Petitioner's proposed endeavor to work as a manager in the professional training and development field has substantial merit.

However, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work. In *Dhanasar*, we emphasized that "we look for broader implications" of the specific 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." 26 I&N Dec. at 889. 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.

On appeal, the Petitioner maintains that her proposed endeavor will not only directly employ U.S. workers and contribute tax revenue to the U.S. economy but will also "have multiple positive effects on the U.S. marketplace, thus enhancing business operations on behalf of the nation and contributing to a streamlined economic landscape." She further asserts that the services her company provides "will culminate in sustainable growth and financial returns for served organizations – creating positive ripple effects for . . . employees, investors and overall community."

We have reviewed the staffing and revenue projections in the submitted business plan. The Petitioner projects that her company will employ five full-time and 10 part-time employees in three states within five years and during that period, cumulatively pay wages of over \$1 million, generate gross revenues of over \$2.2 million, and contribute over \$156,000 in tax revenue to the economy.

Not only are these employment and revenue projections not supported by details showing their basis or an explanation of how they will be realized, but they also do not demonstrate a significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Specifically, the record does not support that the direct creation of fifteen additional full- and part-time jobs in this sector or the expected tax revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework.

The Petitioner states she intends to “help fuel small business growth in historically underutilized business zones” in [REDACTED]. The accompanying business plan indicates her company will open branches in “selected HUBZones” in these cities, but does not further elaborate on these plans.² The Petitioner has not offered sufficient evidence that her business will be located in one or more HUBZones. Further, she did not indicate that her proposed endeavor would participate in the HUBZone program or that it would be eligible to do so. While it appears the Petitioner may have intended to equate a designated HUBZone with an “economically depressed area,” the record does not support a conclusion that this is an equitable comparison. Finally, she has not otherwise claimed or provided evidence that the areas where her company intends to operate are economically depressed, that it would employ a significant population of workers in those areas, or that her endeavor would offer a region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue.

We recognize that the Petitioner's consulting activities in the corporate training field are intended to lead to improvements in employee morale and productivity and increased employee retention rates, which may indirectly result in increased revenues for her business clients. However, the record lacks sufficient evidence that these gains would be significant enough to establish her proposed endeavor's national importance. While any increased business activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the economic activity resulting from her business would rise to the level of having regional or national economic impacts. Despite her claims that her proposed activities will result in a “streamlined economic landscape” throughout the United States, the Petitioner does not offer an evidentiary basis to conclude that the “ripple effects” of her proposed endeavor will have such far-reaching results. The record does not support a determination that any indirect benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *See id.* at 890.

We have also considered whether the Petitioner's proposed endeavor will have broader implications in her field or industry. We determined in *Dhanasar* 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. 26 I&N Dec. at 893. Here, the Petitioner, through her company, intends to deliver one-day training workshops that focus on productive communication, leadership, empathy, and unlocking creativity in the workplace. The Petitioner estimates that she will deliver 29 workshops to her business clients in the first year and approximately 150 annual workshops by year five. Like the petitioner in *Dhanasar*,

² Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized business zones, with a goal of annually awarding at least 3% of federal contract dollars to HUBZone-certified companies annually. *See* “HUBZone Program,” <https://www.sba.gov/federal-contracting/contracting-assistanceprograms/hubzone-program>.

the Petitioner has not established how her teaching or training activities would have broader implications in her field that reach beyond the participants in her workshops. The record does not establish, for example, that she plans to disseminate her training methods or course materials such that her specific endeavor would provide a platform for the introduction of new training processes or methodologies or that she would otherwise be in a position to influence the broader professional training and development sector.

Finally, to illustrate the potential impact of her proposed endeavor, the Petitioner points to her past employment experience and her academic qualifications in human resources management and corporate-focused business education. We reviewed her statements and several reference letters from her employers and past clients. The authors of the letters praise the Petitioner's abilities as a corporate trainer, her personal attributes, her subject area expertise, and her past contributions to their individual organizations. However, they do not discuss her specific proposed endeavor or explain why it has national importance. For example, several of the letters are from former clients in Brazil who state that the training she provided has increased their individual companies' productivity, but they do not speak to the potential broader implications of her work. As such, the letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*. Furthermore, we note that the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." 26 I&N Dec at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of her proposed work.

While the Petitioner's evidence shows how her endeavor stands to positively impact her business clients and their employees, it does not demonstrate how her endeavor will have a broader impact consistent with national importance. Accordingly, the Petitioner has not established that her proposed endeavor meets the first prong of the *Dhanasar* framework.

Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning her eligibility under the third prong of the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

IV. 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 reason.

ORDER: The appeal is dismissed.