



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

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

In Re: 27460085

Date: JUL. 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial lawyer, 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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

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).

- 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal 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.

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

Initially, the Petitioner claimed that she intended to work in the United States as a commercial lawyer. She submitted a professional plan describing her proposed endeavor as follows:

Having worked in the legal industry with so many achievements throughout my career, I'm well adept to complex legal processes in several legal matters to public and private companies. I am determined to use my expertise as a means to complement and enhance the legal industry in the United States and to be a contributing member of society as a lawyer.

Considering my unique set of skills, my proposed endeavor is to provide my specialized knowledge acting as a Commercial Lawyer, providing marketing, international, and business consulting insights to U.S. based companies.

I intend to work both nationally and internationally in the private and public sectors, as well as provide legal [advice] to U.S. clients, offering a high-level of practical experience and a more professional route for legal cases.

In the context of the companies in which I will work for, I will offer my technical skills in key areas of international trade in goods and services, as well as my vast experience in interaction with regulatory bodies, supply chain and the mechanics of international trade and logistics.

...

I will also perform the analysis of laws, precedents, and legal adequacy in specific cases of public-private contracting in order to elaborate of opinions and theses, as well as perform contract management tools, with a focus on results and solving complex problems.

The Petitioner further explained that in addition to working as a commercial lawyer, her proposed endeavor would also involve her working as a commercial director. She further claimed that she would engage in marketing, international and business consulting, and teaching and university research.

The Petitioner also supported the record with her resume, copies of her academic records, certificates of recognition, an expert opinion letter, and letters of support.

In a request for evidence (RFE), the Director noted the evidence submitted but observed that the Petitioner submitted insufficient evidence to demonstrate that the proposed endeavor would have potential implications that are of national importance. In response to the Director's RFE, the Petitioner submitted a new professional plan which stated:

Working with product development, modeling various international contracts according to the standards of the treated countries, and customizing products, I will create and implement the commercial/logistics and administrative routines necessary to develop commercial and marketing strategies with distributors, buyers, and suppliers for the U.S.

I will create supply chains and raw material joint ventures between Brazil and the United States, management tools, and results in monitoring. I will train product and marketing teams with distributors and sales representatives.

Within marketing, I would create and implement marketing campaigns and sales and product treatment aimed at commercial teams. To this end, I will select partnerships and negotiate strategic purchases, represent the company at international events, install and develop a national strategic marketing plan, and create a marketing department and its support tools.

With my experience from having already accomplished and achieved these achievements, I will update business procedures and customer service for international titling and certification like ISO 9001 and 14000.

Also, I will develop merchandising materials, coordinate media campaigns according to the company's Strategic Plan, develop new international market studies, and strengthen the network of national clients.

With these measures, I will help the company to acquire renown and respect with international certifications, increase profits and retain consumers with highest quality products and services.

Also, I will make the essential commercial and investment link with Latin America, where I will present to new North American investors attractive factors that prove how this is a place to diversify internationally in several sectors.

She also resubmitted a copy of her resume with the response.

In denying the petition, the Director concluded that the record contained insufficient evidence to demonstrate that the Petitioner's proposed endeavor had either substantial merit or national importance. The Director further determined that the description of the proposed endeavor was insufficient as it was not sufficiently detailed.

On appeal, the Petitioner asserts that her proposed endeavor has both substantial merit and national importance, and contends that the Director overlooked several pieces of evidence such as her educational background and experience as well as support letters and an expert opinion letter submitted in support of the petition. The Petitioner's counsel submits a brief, claiming that the Petitioner's expertise in commercial law will be invaluable for the success of U.S. companies and individuals. Counsel further contends that the Petitioner's experience in law and international business will help facilitate cross-border transactions between the United States and Brazil. Counsel concludes by claiming that her work in the areas of commercial law, legal compliance, international law, and business consulting will influence the national economy and will benefit U.S. companies seeking to expand their businesses overseas.

Preliminarily, we note that the Petitioner proposes to contribute to the U.S. economy by serving as a commercial lawyer. Her initial professional plan focused on the various types of legal services she would provide to U.S. companies, and briefly noted that she would engage in other services related to marketing, international and business consulting, and teaching and university research. In response to the RFE, the Petitioner submitted a new professional plan, where the focus of her endeavor switched its focus to marketing and business development tasks. The Petitioner also indicated her desire to engage in university teaching and research. The Petitioner did not provide a timeline for when she would occupy one or all of these roles and it is not apparent whether securing a position in any of these areas is the proposed endeavor or whether the proposed endeavor involves the Petitioner performing these roles either simultaneously or consecutively. Overall, we have insufficient information concerning the proposed endeavor with which to determine whether it has both substantial merit and national importance because the Petitioner's proposed endeavor has not been clearly defined, as noted by the Director. Because the Petitioner did not clearly articulate the nature of the proposed endeavor, we find the record contains insufficient persuasive evidence to support a finding of substantial merit. The Petitioner bears the burden to both affirmatively establish eligibility under the *Dhanasar* framework, of which substantial merit is one piece, and establish her eligibility by a preponderance of the evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

Here, it remains unclear as to what specifically the Petitioner's proposed endeavor involves. We do not know if the Petitioner intends to perform all the identified roles she describes or whether she will perform in only the first job she secures. In addition, we have little clarity on which position, if any,

she will obtain, and whether that position will be that of a commercial lawyer, a commercial director, a business consultant, or a position in marketing or with a university. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *See id.* at 889. While it may include one or more of the positions outlined above, we conclude that the Petitioner has not provided a specific or consistent proposed endeavor activity such that we can determine its substantial merit and national importance.

Throughout the record, the Petitioner points to her background, education, and experience in her field, noting on appeal that she has extensive professional experience in commercial law supported by extensive recognition and certificates. The Petitioner’s knowledge, skills, and experience in her field, however, relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under the second consideration of *Dhanasar*’s first prong. To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of her work.

The Petitioner maintains that her proposed endeavor has national and global implications within the field, noting that she will boost the U.S. company by providing valuable legal advice, assisting companies and clients with key investments, facilitating cross-border transactions, and assisting U.S. companies to seize market opportunities and investments abroad. The Petitioner broadly maintains that she has the experience and ability to contribute to the national economy.

Although the Petitioner’s statements reflect her intention to provide valuable legal and business-related services for corporate and individual clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. She has not shown how her work in commercial law or business would have a demonstrable impact on the U.S. economy. While the Petitioner contends that her proposed endeavor will create cross-border initiatives between the U.S., Brazil and Latin America, she has not shown, for example, that the prospective impact of the legal and business services she intends to perform would represent a significant share of the legal services or business market.

The Petitioner also asserts that her endeavor has national importance due to a shortage of lawyers and legal professionals. To the extent that the Petitioner’s proposed endeavor can be understood, we conclude that she has not substantiated how her specific work in the field of commercial law will address a shortage of lawyers, as claimed, or positively impact the economy. Specifically, how one lawyer will improve a national shortage or will trigger substantial positive economic impacts has not been explained. Furthermore, even if the Petitioner was able to establish a shortage of lawyers in the United States, the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone would not demonstrate that waiving the requirement of a labor certification would benefit the United States. Moreover, none of the documents submitted establish that the benefits of working as a commercial lawyer in the public or private sector would extend beyond her employers or clients in a manner that could be considered of national importance.

Even assuming the Petitioner chooses to pursue her ideas concerning work as a commercial lawyer, she has not provided sufficient information of how her services in this area would rise to the level of

national importance. While such endeavors may impact the individual companies or clients the Petitioner works with, the national importance of this work has not been adequately explained or substantiated. Similarly, 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.

The Petitioner further contends that the Director did not duly consider certain pieces of evidence and failed to apply the correct standard of proof when reviewing the evidence. In support, she relies primarily upon the evidence and arguments previously submitted. While we acknowledge the Petitioner's appellate claims, we nevertheless conclude that the documentation in the record does not sufficiently establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* analytical framework. For example, while the Petitioner submitted numerous letters of recommendation from colleagues in the field, none of the authors discussed the Petitioner's proposed future endeavor. Instead, the authors primarily focused on the Petitioner's past work experience and accomplishments. Although the record contains statements regarding the Petitioner's legal career and accomplishments, and although the letter writers praise the Petitioner's qualifications and commend her work, we have insufficient information concerning the Petitioner's proposed future endeavor with which to make a determination concerning its substantial merit and national importance.

The Petitioner also submitted an expert opinion letter from [REDACTED] Associate Teaching Professor of Law at [REDACTED] University School of Law. This letter primarily addresses the importance of the Petitioner's industry and profession by generally explaining why commercial law experts are beneficial to U.S. businesses, particularly those engaged in business in Brazil. Much of the content of the letter is lacking relevance because it discusses the importance of the Petitioner's industry and occupation rather than addressing how the specific proposed endeavor would satisfy the national importance element of the first prong of the *Dhanasar* framework. The writer offers little analysis of the proposed endeavor and its prospective substantial economic impact and does not otherwise address the implications of the proposed endeavor on the larger field of commercial law. Her statements about the occupation or the field in general do not establish how the specific proposed endeavor stands to impact the broader field or otherwise establish its national importance. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable").

Because the Petitioner has not provided sufficient information and documentation regarding her proposed endeavor, we cannot conclude that she meets the first prong of the *Dhanasar* framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility under the second and third prongs. *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.

ORDER: The appeal is dismissed.