



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

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

In Re: 26982496

Date: JUNE 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an interior design entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, 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 Petitioner 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.

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 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;

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 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’s decision did not render a determination as to whether the Petitioner qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability. Instead, the decision only addressed the Petitioner’s eligibility for a national interest waiver. Therefore, the issue for consideration 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.²

With respect to her proposed endeavor, the Petitioner initially indicated that she intends to continue to work “as an entrepreneur, specifically focusing on the remodeling, interior design, and home decoration sectors.” She asserted that she plans to “grow the operations of my active business in the United States, B-D-, LLC, – a home design and construction company registered in the state of Florida.” The Petitioner further stated that she “will bridge the gap between concept and realization, and I will do this by offering highly tangible solutions, which emphasize on the end consumer.” She also noted that she planned to collaborate with another “company on a luxury real estate project called W-P-, which will be located . . . in [REDACTED] Florida. My company has been hired to manage the project’s interior design and remodeling activities.” Additionally, the Petitioner claimed that she is able to “provide business consulting services to other entrepreneurs here in the U.S. . . . I can assist them throughout their entire business life cycle, such as with the hiring of new employees, and the physical expansion of their facilities. I can also aid them in increasing their client portfolio, franchising their businesses, and managing different departments within their companies.”

In response to the Director’s request for evidence (RFE), the Petitioner reiterated that her proposed endeavor in the United States involves working as an entrepreneur “in the remodeling, interior design, architecture, and home decoration sectors.” She indicated that she intended to “expand my already existing U.S. business, B-D-, LLC.”³ The Petitioner further stated that she planned “to generate new business concepts and present these projects to potential investors, thus promoting opportunities for commercial investments in the United States.”⁴

The record includes information about the value of entrepreneurship, foreign-born entrepreneurs as drivers of American innovation, the economic contribution of immigrant-launched businesses, the effect of COVID-19 on innovation, immigrants’ contribution to entrepreneurship, immigrants’ positive effect on the business community and U.S. economy, the economic impact of high-growth startups, the value of the U.S. home improvement industry, small businesses as generators of economic activity, the stages of small business development, and the economic debate over immigration reform.

² Because the Petitioner has not demonstrated her eligibility for a national interest waiver on appeal, we need not remand the decision for the Director to determine whether she qualifies for the underlying EB-2 visa classification.

³ The Petitioner noted that B-D-, LLC “is not currently large enough to directly employ U.S. workers.”

⁴ The Petitioner’s RFE response included a June 2022 “Personal Planning Analysis” prepared for her by [REDACTED]. [REDACTED] This document discusses her personal financial situation, emergency fund, and retirement income objectives, but it does not mention B-D-, LLC or any business operations.

In addition, the Petitioner provided articles discussing the entrepreneur legacy of immigrants and their children, the positive effects of immigrants on the United States, the U.S. remodeling industry, private spending on home improvements, immigrants as key contributors to economic growth, entrepreneurship and the U.S. economy, entrepreneurs as drivers of economic development, middle-market companies as job creators, immigration as an entrepreneurial resource, immigrants' role in the U.S. workforce, the impact of the coronavirus on small businesses, and the value of highly-skilled immigrants. She also submitted information about immigrants' contribution to the U.S. economy, immigrants as drivers of innovation and entrepreneurship, immigrants' tax contributions and spending power, the effect of COVID-19 on business startups, the U.S. management consulting industry, the value of entrepreneurs to the global economy, immigrant entrepreneurship as a path to U.S. economic growth, the effect of small businesses on the U.S. economy, the value of business development for a small business, entrepreneurs as contributors to economic inclusion, and the economic and fiscal consequences of immigration.

Furthermore, the Petitioner provided letters of support from C-S-, I-K-, A-F-, R-S-, A-G-, J-C-R-, and N-V-S- who discuss her business development and interior design capabilities and experience. The Petitioner's skills, knowledge, and prior work 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 he proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner also submitted an "Analysis and Advisory Evaluation" from J-C-, an adjunct professor at [REDACTED] University, in support of her national interest waiver. J-C- asserted that the Petitioner's proposed work is of national importance because "U.S. companies doing business or planning to do business in Brazil would benefit from the expertise and skills of an architect and business administrator such as [the Petitioner] with an extensive knowledge of the architectural environment, marketing and real estate industry in Brazil." The Petitioner's "Professional Plan and Statement" submitted initially and in response to the Director's RFE, however, did not state that her proposed endeavor was aimed at "U.S. companies doing business or planning to do business in Brazil." The letter from J-C- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work in interior design and business consulting offers broader implications in her field or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of her proposed endeavor. The Director stated that the Petitioner had not shown that her undertaking "stands to impact the broader field of interior design or otherwise have implications rising to the level of national importance." Additionally, the Director indicated that the Petitioner had not demonstrated that her proposed work "has significant potential to employ U.S. workers," offers "substantial positive economic effects," or "will broadly enhance societal welfare."

In her appeal brief, the Petitioner argues that her proposed endeavor will "address governmental concerns . . . while progressively affecting the U.S. economy." She asserts that her undertaking is "developing investment and business activities in the real estate and construction areas, promoting commercial transactions, and creating direct and indirect job opportunities for U.S. workers." The Petitioner also contends that her proposed endeavor stands to generate jobs for U.S. workers in underutilized business

zones, improve the wages and the working conditions of U.S. workers, and help the local community bring investments to the region. She further states that her proposed work will contribute to U.S. competitiveness “by bringing competitive services, helping develop the country, and producing income for the U.S. economy.” In addition, the Petitioner claims that her undertaking will “broadly impact the financial services sector” and “affect nationwide activities and business productivity.”

In determining national importance, the relevant question is not the importance of the field, industry, or profession 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. 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.* 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.

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. While the Petitioner’s statements reflect her intention to provide valuable interior design and business consulting services to her 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. 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. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her company or its clientele to impact her field, the real estate and construction industries, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner’s interior design or business consulting projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. 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. 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.