



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

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

In Re: 27438903

Date: JUN. 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 classification as a member of the professions holding an advanced degree. 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. 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 the Petitioner qualifies for EB-2 classification as an advanced degree professional but that the record did not establish that a waiver of the job offer requirement is 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a 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.

II. ANALYSIS

The Petitioner obtained the foreign equivalent of a bachelor's degree in 2003 in Brazil. The Petitioner also provided evidence of at least five years of post-baccalaureate work experience with three companies, from 2003 to 2018. The Petitioner claims that one of the companies was in the automotive parts business, although the record is not clear as to the industry of the other two companies. The Petitioner proposes to establish an e-commerce business in Florida that will sell and ship automotive parts from the United States to Brazil and states that she will work as the company's general and operations manager. However, the Petitioner also submitted evidence related to operating either a consulting business or a cleaning services company.

The Director found that the Petitioner qualifies for the EB-2 classification as advanced degree professional, and that the Petitioner established the substantial merit of her proposed endeavor. However, the Director found that the Petitioner had not established the national importance of her proposed endeavor, nor did she establish the second or third prongs of the *Dhanasar* analytical framework.

As to the national importance element of the first prong of *Dhanasar*, the Director found that the Petitioner did not establish that her proposed endeavor has the significant potential to provide economic benefits, nor that the proposed endeavor would have implications beyond the business's partners, clients, or customers to impact the field more broadly. The Director also noted that there is some lack of clarity in the record regarding the Petitioner's proposed endeavor. Specifically, although the Petitioner proposes to establish an e-commerce automotive parts business, in response to the request for evidence (RFE), the Petitioner submitted evidence that she co-owns a company called [REDACTED]. The provided tax and license documents state that this company is either a cleaning or construction business, but other evidence in the record attempts to establish that this company provides business management and consulting services. The record is not clear as to whether or how the proposed e-commerce business relates to her partnership in [REDACTED].

On appeal, the Petitioner submits a brief statement in which she asserts that she is eligible for a national interest waiver under each of the three prongs of the *Dhanasar* framework. However, the Petitioner does not identify any specific legal or factual errors in the decision nor attempt to overcome any of the adverse findings in the decision. Additionally, although the Petitioner does not clearly state so, she appears to be describing the consulting business as her proposed endeavor, as she asserts on appeal that will use her "experience in business management to help enterprises in the U.S. improve operations and achieve better productivity and profitability." The Petitioner does not discuss on appeal

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).

her proposed e-commerce automotive parts business.² In support of the national importance of the proposed endeavor, the Petitioner makes general claims that she “will support the nation by contributing her extensive leadership, experience, and skill in managing business and financial operations,” and the United States “would greatly benefit from the expertise and skills of a general and operations manager.” The Petitioner’s appeal does not reference or discuss any specific evidence in the record that supports these claims.

Upon de novo review of the record, we agree with the Director that the evidence does not establish the national importance of the Petitioner’s proposed endeavor. The evidence in the record includes the Petitioner’s educational documents, resume, work experience letters, training certificates, and letters of support. These documents primarily relate to the Petitioner’s qualifications and experience and do not help establish the national importance of the proposed endeavor. Rather, this evidence relates to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the [noncitizen]” and whether she is well-positioned to advance it. *Matter of Dhanasar*, 26 I&N Dec. at 890. In support of the national importance of the proposed endeavor, the Petitioner also submitted a business plan, a “definitive statement,” and articles.

The Petitioner’s business plan, which discusses her proposed e-commerce automotive parts business, projects hiring two employees who would each be paid around \$30,000.00 annually and forecasts an annual revenue of \$373,000.00 by year five. However, the business plan does not explain the methodology used to make these projections; they are merely asserted without sufficient explanation. Moreover, even we were to conclude that the Petitioner had sufficiently established the reliability of these projections, the Petitioner has not established that the creation of two jobs and revenue of around \$300,000.00 would result in the “substantial positive economic effects” contemplated by *Matter of Dhanasar* as demonstrating national importance. *Id.* at 891.

The articles submitted by the Petitioner relate to the importance of small businesses and entrepreneurship on the U.S. economy. However, these articles do not discuss the Petitioner or her proposed endeavor. In determining whether a proposed endeavor has 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 potential prospective impact of the “specific endeavor that the [noncitizen] proposes to undertake.” *See id.* at 889. As such, we conclude that these articles do not establish the national importance of the Petitioner’s proposed endeavor.

The record also contains a “definitive statement” from the Petitioner regarding the proposed e-commerce business, which primarily describes the Petitioner’s intent to establish this business and her work experience and qualifications to operate it. Although the statement also asserts that the endeavor is nationally important because it will create jobs for U.S. workers and revenue for the U.S. economy, the record does not support these claims. As stated above, the Petitioner bears the burden of proof to establish eligibility for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 375-76. The Petitioner must submit “relevant, probative, and credible evidence” to establish her claim, and we

² We also note that it appears the Petitioner’s appeal brief may have been written from a template that was not completed fully, as it describes the Petitioner as having “vast experience in SPECIALTY” and “extensive knowledge and expertise in INDUSTRY.”

conclude that the Petitioner has not met her burden of proof to establish the national importance of her endeavor with the unsupported assertions in the record alone. *Id.* at 376.

We also agree with the Director that there is lack of clarity regarding the proposed endeavor. Much of the evidence submitted in response to the RFE relates to operating a business which is engaged in either cleaning and construction services or business consulting services. As mentioned above, the Petitioner's RFE response included state licenses and tax documentation for her partnership [REDACTED]. [REDACTED] These documents refer to the company as offering either cleaning or construction services. But the RFE response also included letters from customers who state they hired [REDACTED] [REDACTED] for business management and consulting services. Finally, the RFE response included what appears to be marketing materials for the Petitioner's "methodology" in business development and business operations. The specific types of services offered by [REDACTED] as well as its connection, if any, to the proposed e-commerce business are not clear from the record. Although the decision discusses this ambiguity, the Petitioner does not attempt to clarify this issue on appeal.

The Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to whether the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, the Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). 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), (b)(8), (b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform with USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). Without resolution of how, if at all, the diverse business pursuits are connected, we are not able to conclude whether the Petitioner seeks to materially change her endeavor away from operating the e-commerce business. But regardless, this evidence does not reference the Petitioner's proposed endeavor of establishing an e-commerce business and does not help establish that such an endeavor would have national importance.

The Petitioner's appeal does not identify specific legal or factual errors in the decision, attempt to overcome any of the adverse findings in the Director's decision, or attempt to clarify the ambiguity regarding the evidence in the record. Moreover, a review of the record shows that the Petitioner has not established that the proposed endeavor has national importance, as required by the first prong of the *Dhanasar* analytical framework. Because the Petitioner has not met the requisite first *Dhanasar* prong, we conclude that the Petitioner has not established that she is eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 the applicant is otherwise ineligible).

III. CONCLUSION

Because the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.