



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

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

In Re: 27366512

Date: JUNE 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an environmental manager, 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. 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 record did not establish that the Petitioner qualifies for the national interest waiver. 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 qualify for a national interest waiver, a petitioner must first show eligibility 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 EB-2 eligibility, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” *Id.* 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 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;

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 Petitioner earned a bachelor's degree in environmental management in Brazil in 2010. In 2017, she completed a 120-hour training course in "Legal Responsibilities in Occupational Safety and Health." Starting in 2010, she worked for various employers in [REDACTED] Brazil, first as an environmental analyst for a consulting service and then in the same capacity for a pharmaceutical company. In 2013, she started working as a compliance, strategy and transaction project coordinator for an environmental consulting firm, conducting environmental due diligence and site assessments relating to mergers and acquisitions and health and safety compliance audits. In 2018, her employer's U.S. affiliate brought the Petitioner to the United States as an L-1B nonimmigrant. The Petitioner was still in valid L-1B status in October 2020 when she filed the present petition on her own behalf. In 2021, the Petitioner began working for a U.S. company that mines minerals for agricultural use. After working as an environmental health and safety outreach project management lead, she was promoted in 2022 to corporate environmental programs manager.

The record demonstrates that the Petitioner qualifies as a member of the professions with progressive post-baccalaureate experience equivalent to an advanced degree. *See* 8 C.F.R. § 204.5(k)(2). The remaining issue to be determined 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 Petitioner described her proposed endeavor in a statement submitted with the petition:

I will use my skills and knowledge . . . to work in the field of occupational health and safety as an Environmental Manager, benefitting U.S. organizations and workers. Ultimately, this work will actively enhance the health and safety, general operations, profitability, and strategic management of all the organizations that require my expert services. My career plan in the U.S. is to work as an Environmental Manager, where I can reduce hazards and ensure a safe working environment in a variety of industries. I can assist in conducting health and safety assessments, inspect work sites and machinery for potential hazards, and ensure compliance with all state and federal laws. I also intend to open my own health and safety consultancy.

. . . .

My specific endeavor will potentially impact the U.S. in the following ways:

- Develop occupational and environmental health and safety procedures and processes for U.S. organizations;
- Aid in the compliance of, existing and new, environmental and occupational health and safety regulations.
- Work in rural and economically underserved areas that are in high demand for Health and Safety professionals of my caliber, where I can promote career growth and professional development;

- Train new professionals, creating jobs for American workers in the field of occupational health and safety;
- Improve working conditions for U.S. organizations and minimize absenteeism from work-related accidents and injuries.

In a separate statement, the Petitioner stated:

Generally, environmental managers are responsible for reducing hazards and ensuring a safe working environment in a variety of industries. They assist in conducting health and safety assessments, inspect work sites and machinery for potential hazards, and ensure compliance with all state and federal laws.

Environmental managers develop procedures and design systems to protect people from illness and injury and property from damage. . . .

They also investigate industrial accidents and injuries. . . .

Occupational health and safety [is] the field of public health that studies trends in illnesses and injuries in the worker population. . . .

. . . .

[The Petitioner] has the capability to render health and safety trainings and guidelines to businesses and workers in the United States.

On the petition form, the Petitioner indicated that the Standard Occupational Classification (SOC) code for her intended occupation is 19-2041. The Petitioner also submitted a printout of the Summary Report for that SOC code, from the Department of Labor's *O*NET OnLine* database. The printout identifies the occupation as "Environmental Scientists and Specialists, Including Health." The occupation described in that printout, however, appears to be very different from the Petitioner's intended occupation of environmental manager. Environmental scientists "[c]onduct research or perform investigation for the purpose of identifying, abating, or eliminating sources of pollutants or hazards that affect either the environment or public health." The Petitioner also submitted background materials about pollution and climate change. The Petitioner did not explain how these materials relate directly to her proposed endeavor in "occupational health and safety."

The Director requested "[a] detailed description of the proposed endeavor [explaining] why it is of substantial merit," supported by "[d]ocumentary evidence."

In response, the Petitioner stated: "My career has been aimed at evaluating the potential for significant environmental liabilities related to soil and groundwater conditions, environmental compliance, and minimizing risks for large corporate clients in merge and acquisition processes." The Petitioner repeated the prior assertion that her "proposed endeavor in the United States will be to assist U.S. organizations to design, develop, and implement the integral systems and procedures needed to protect American workers from illness and injury, as well as avoid property damage." She stated that she

intends to “assist in conducting health and safety assessments, inspect work sites and machinery, and ensure a safe working environment.”

The first *Dhanasar* prong, 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner had not established the substantial merit of her proposed endeavor, because she “failed to show how the proposed endeavor will prevent illness and/or injury in the workplace.” We disagree with the Director’s conclusion. While substantial merit and national importance are both part of the same prong under *Dhanasar*, they are distinct elements, and an endeavor can have substantial merit regardless of its national importance. The Petitioner has identified federal legislation such as the Occupational Safety and Health Act, demonstrating the federal government’s interest in promoting worker safety.

Nevertheless, notwithstanding the *collective* impact of individuals in the Petitioner’s field, we agree with the Director that the Petitioner has not established the national importance of her specific proposed endeavor.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. An undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. *Matter of Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner has not established that her proposed endeavor has such implications. There is some benefit to individual employers or customers, but the Petitioner has not explained how that localized benefit is of national importance.

In a separate statement, the Petitioner discussed the contributions of “sales managers and business developers,” and asserted that she “will create value for U.S. organizations. She will do this through improved performance, achieved by providing objective advice regarding optimization of business processes using respected industry methodologies, as well as implementing effective business development, sales and marketing techniques.” The Petitioner, however, proposes to work as an environmental manager, not as a sales manager or business developer, and she did not explain the relevance of the information about those other occupations.

As evidence intended to show the national importance of her proposed endeavor, the Petitioner submitted background evidence about climate change, but she did not explain how her work “protecting the safety and health of workers” relates, or provides a solution, to climate change.

The Petitioner submitted information about “[t]he Environmental Consulting industry,” consisting of statistics about market share, costs, and other technicalities and challenges relating to operating a business in that field. This information does not address or establish the national importance of the work of individuals in the occupation. The Petitioner did not explain how her evidence shows that the

impact from her work will extend beyond her employers, if she works for one company, or her customers if she operates as an independent consultant.

The Director denied the petition, stating that the Petitioner had not shown the national importance of her proposed endeavor. The Director also observed that the Petitioner had not established the relevance of the supporting materials.

On appeal, the Petitioner states that “she will enhance the revenue of U.S. environmental engineering companies,” and “create jobs and generate tax revenue.” The Petitioner does not elaborate or cite any specific record evidence to support these assertions. The Petitioner repeats earlier statements that “[h]er career has been aimed at evaluating the potential for significant environmental liabilities related to soil and groundwater conditions, environmental compliance, and minimizing risks for large corporate clients in merge and acquisition processes,” and that her “proposed endeavor will be to assist U.S. organizations to design, develop, and implement the integral systems and procedures needed to protect American workers from illness and injury, as well as avoid property damage.” These statements were already in the record when the Director denied the petition, and the Petitioner does not explain how the Director’s conclusions were in error. As before, the Petitioner cites generalized, aggregate national statistics that do not establish the degree to which her specific proposed endeavor will benefit U.S. businesses, the environment, the economy, or worker safety.

The Petitioner has not submitted consistent evidence to establish the national importance, or even the precise nature, of her proposed endeavor. As noted above, her statements tend to focus on worker safety, an area that we recognize as meritorious. But she has also provided information about climate change and sales management, and the record is not consistent as to whether she would act as an independent consultant or as the employee of one company, as she has been since 2021. These divergent claims do not permit us to conclude that she has set forth a *specific* proposed endeavor as required by *Matter of Dhanasar*, 26 I&N Dec. at 889.

For the above reasons, the Petitioner has not established the national importance of her specific proposed endeavor. In light of the above conclusions, the Petitioner has not met her burden of proof to show that she fully satisfies the first prong of the *Dhanasar* national interest test. Detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the other prongs.²

III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.

² See *INS v. Bagamasbad*, 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).