



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 27419087

Date: JUNE 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an industrial engineer, 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 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). 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. The Director concluded that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate her eligibility for the requested 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 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest."

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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 USCIS may, as matter of discretion², 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 proposes to establish an industrial engineering consulting business in the United States having worked as a professor, researcher, and coordinator of post-graduate studies in Venezuela.

The Petitioner provided her academic diplomas to demonstrate qualification for the underlying EB-2 visa classification as an advanced degree professional. The record includes her Ph.D. degree in industrial engineering from Universidad [redacted] Spain; and her magister scientiarum and bachelor of industrial engineer degrees from Universidad [redacted] [redacted] in Venezuela. The Director determined that the Petitioner established her eligibility as a member of the professions holding an advanced degree based on the equivalency of her foreign degrees being above that of a U.S. bachelor’s degree.

However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar prong. Upon de novo review, we agree with the Director’s determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.³

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 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.” Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner initially submitted a statement with a broad description of her proposed endeavor, “Research, development, consulting, and training pertaining to industrial engineering applied to strategic management and production processes, as well as provide teaching activities in STEM disciplines.” The Petitioner claimed her proposed endeavor would aim “to advance industrial competitiveness and national interest in optimization of strategic management and production

² 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).

³ While we may not discuss every document submitted, we have reviewed and considered each one.

processes sector. . . .” The initial description of the proposed endeavor did not include any specific plans or evidence about starting an industrial engineering consulting business.

Given the general description of the Petitioner’s proposed endeavor, the Director requested she provide specific insight and details of the proposed endeavor. In response, the Petitioner submitted a professional plan describing a proposed new industrial engineering consulting business, [redacted] [redacted] for which the Petitioner would be its director. The professional plan states that the business is comprised of “dedicated engineering, environmental, information technology, and management professionals who team with [its] clients to solve problems and pursue opportunities to improve the communities in which [they] live.” The business would provide consulting services to “industries and companies of the public and private sectors of North America and especially . . . productive sectors of national interest.” The professional plan provides the sectors it intends to focus on, including manufacturing, defense and aerospace, information technology, healthcare, supply chain, management, education and research, public service, military and homeland security, energy, and finance, banking, and service industry. We agree with the Director that the Petitioner’s endeavor has substantial merit.

However, the Director found that the Petitioner did not establish that her work would “have a broader impact on the field, rising to the level of having national importance.” The Petitioner contends on appeal that she “complied with the burden of proof” by submitting relevant, probative, and credible evidence that shows eligibility for the benefit sought by a preponderance of the evidence. She reiterates assertions made in the petition that her case is similar to *Dhanasar*, “Like *Dhanasar*, where the technical information and analysis of [the] [p]etitioner’s field of labor were used to [sic] show the national importance of the matter, . . . the proposed endeavor in this matter is also within [n]ational [i]mportance as for the . . . technical information and analysis, all based on research and statistics collected from several experts, and specialized government agencies.” While the Petitioner states that she relies on evidence in the record to support her assertions, she does not provide an explanation of how the evidence supports her assertions on appeal. Upon de novo review, we find the Petitioner did not demonstrate that her endeavor satisfies the national importance element of *Dhanasar*’s first prong, as discussed below.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what is claimed is “more likely than not” or “probably” true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989). Here, the Director properly analyzed the Petitioner’s documentation and weighed her evidence to evaluate the Petitioner’s eligibility by a preponderance of evidence.

On appeal, the Petitioner’s stresses her “expertise and knowledge in the supply chain industry are critical in improving the efficiency and productivity of the U.S. supply chain, which is a vital component of the U.S. economy.” The Petitioner argues her proposed endeavor will benefit “corporate and governmental needs for supply chain security and intellectual property safety, managed with strategic industrial competitiveness and dependable production methods that would produce high-quality goods, enhance capital repatriation, and ensure employment for the local population.” The Petitioner explains her consulting business would “have broader implications for the country, not just

in the supply chain industry but also in terms of the country's overall economic success and competitiveness in the global market." The Petitioner asserts her business would provide positive economic effects and growth, by helping "U.S. businesses to expand their operations and create more job opportunities" and having "a ripple effect on other industries that are part of the supply chain . . . leading to increased job opportunities." She asserts her proposed endeavor would have other U.S. economic benefits, in that "the efficiency and productivity of the supply chain" would cause businesses to "reduce costs, increase productivity, and become more competitive in the global market." She further argues that her proposed endeavor would "enhance societal welfare" by supporting "other sectors of the economy, such as healthcare and education."

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. See *Matter of Dhanasar*, 26 I&N Dec. at 889. With the petition, the Petitioner submitted a letter contending her proposed endeavor has national importance based on the potential economic and societal benefits asserted in the appeal. However, the Petitioner has not provided corroborating evidence, aside from claims in her statements, that her business's activities stand to provide substantial economic and societal benefits to the United States.

The Petitioner's claims that her business will benefit the U.S. economy with new jobs and improvements to society welfare has not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate her endeavor has the potential to provide economic and societal benefits to the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that her proposed job duties as the director for her business would impact the industrial engineering industry more broadly rather than benefiting her proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

The Petitioner submitted a professional plan, which explains her credentials and experience; industries the consulting business will serve; a brief history and analysis of industrial engineering; types of companies employing industrial engineers; salaries and employment statistics for industrial engineers; her business's approach to providing consulting services to companies; and the business's pricing structure, marketing, and schedule for starting the business. While the professional plan provides a description of the proposed consulting business, the types of companies it will service, and the Petitioner's experience, it does not document the potential prospective impact, including the asserted economic and societal benefits to the United States.

The Petitioner also submitted her resume and recommendation letters from her colleagues and students, which discuss her work as a professor and university researcher. The recommendation letters provide details of, and admiration for the Petitioner's teaching and research activities. However, these documents relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *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. *Id.* The letters instead attest to the Petitioner's previous teaching and research achievements while generally recommending the Petitioner for future teaching and job opportunities.

We acknowledge that the Petitioner provided valuable teaching and research work for her employers in the past, but the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of her proposed endeavor rising 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. *Matter of Dhanasar*, 26 I&N Dec. at 893. In addition, these letters do not show that the Petitioner's proposed endeavor will substantially benefit the U.S. business industries and the field of industrial engineering, as contemplated by *Dhanasar*: "[a]n 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." *Id.* The letters do not demonstrate that the Petitioner's work will have national or global implications in the field of industrial engineering.

To further support the national importance of her endeavor, the Petitioner submitted an expert opinion from [REDACTED] a professional profile evaluator for [REDACTED] Educational Services, a private educational and professional consulting firm in [REDACTED] Florida. In the opinion's eligibility analysis for the proposed endeavor's national importance, the opinion describes the Petitioner's proposed endeavor, as was explained in the professional plan, and provides a list of the Petitioner's "main awards and recognitions" and website links for verification of her research work. Instead of focusing on the potential prospective impact of the proposed endeavor, the opinion focuses on the Petitioner's experience and knowledge. The opinion states that the Petitioner is "highly qualified to teach and implement her experiences in [U.S.] supply and distribution chains" and "the United States would greatly benefit from the experience and skills of an experienced manager and consultant like [the Petitioner], who has extensive knowledge and experience in vital areas of the country, evidenced by substantial merits." The opinion does not focus on the Petitioner's specific endeavor and its having a potential prospective impact on the U.S. economy or societal welfare, or in the field of industrial engineering.

USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, as noted, much of the content of the opinion relating to national importance is lacking relevance because it discusses the Petitioner's experience and accomplishments, rather than addressing how the specific proposed endeavor would satisfy the national importance element of the first prong of the *Dhanasar* framework. Simply stating that her experience, knowledge, and work would support an important industry is not sufficient to meet the "national importance" requirement under the *Dhanasar* framework. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. See *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

The Petitioner also submitted documentation relating her professor and research work with universities, including research papers she authored and presented, research papers she reviewed for her students, her students' evaluation worksheets, and her work as coordinator of post-graduate studies at a university. Without an explanation for these documents, it is unclear how this documentation and the Petitioner's previous work is meant to help demonstrate the national importance of the Petitioner's proposed endeavor. While some of the research papers authored by the Petitioner relate to industrial engineering, many of the documents do not relate to the Petitioner's proposed endeavor and instead relate to topics other than industrial engineering, such as university curriculum.

The Petitioner also submitted industry reports and articles relating industrial engineering and the fields of science, technology, engineering, and mathematics (STEM), including the importance of industrial engineering; the shortage in the United States of industrial engineering and STEM workers; the need for students and professors in STEM; how stresses in supply chain affect manufacturing in the United States; and the effects COVID-19 has on global supply chains. We recognize the importance of industrial engineering, STEM, and related careers; however, merely working in the industrial engineering field or starting an industrial engineering consulting business is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we 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.

We acknowledge that when considering national importance, "[m]any proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance." See generally 6 USCIS Policy Manual F.5(D)(2), <http://www.uscis.gov/policy-manual>. However, the Petitioner has not shown how her being the director of her new industrial engineering consulting business will advance technologies and research for the field of industrial engineering.

Subsequently, the Petitioner does not demonstrate that her proposed endeavor extends beyond her future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as the director of an industrial engineering consulting business offers original innovations that contribute to advancements in her industry or otherwise broader implications for her field. The economic and societal welfare benefits that the Petitioner claimed depend on numerous factors and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed business's industrial engineering consulting work and the claimed economic and societal welfare results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, she has not demonstrated eligibility for a national interest waiver. 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 find that the Petitioner has not established eligibility for 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.