



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

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

In Re: 25965848

Date: MAR. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner shows:

- 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.

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).

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.² 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 relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a “Professional Plan & Statement” indicating:

I intend to continue using my experience and knowledge in the fields of marketing and business administration by working as a Marketing Manager in the United States.

....

My extensive background experience in the areas of marketing, advertising, and media planning will be beneficial for companies in the U.S. looking to reach key targets in these segments. I have vast knowledge in marketing management, business development, advertising, account and campaign management, media planning, strategic planning, financial analysis, market research and analysis, personnel management, and leadership, working in multifunctional projects

....

My career plan in the United States is to continue working with American companies that require my specialized knowledge, years of experience, and significant expertise. I intend to continue designing marketing and media strategies, maintaining positive working relationships with peers to facilitate company growth, and identifying viable opportunities for business development through extensive research.

In response to the Director’s request for evidence (RFE), the Petitioner submitted a “Definitive Statement” reflecting:

I intend to continue using my expertise and knowledge, gained through more than seventeen (17) years of experience and services in the field of marketing, to develop a marketing consulting agency, [REDACTED] in the state of Florida. The company will provide services such as: brand strategy, consulting sessions, full analysis and industry research, digital marketing analysis, pre-investment viability studies, strategic planning, plan and managing budgets, and post-buy and performance reports. The company will cater to small and medium-sized companies in the U.S.

² The Director indicated that since the Petitioner qualifies a member of the professions holding an advanced degree, he need not evaluate whether the Petitioner also qualified as an individual of exceptional ability.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner states she "intends to continue using her expertise and knowledge to work as a marketing manager and contribute to the U.S. economy by developing and expanding her company in the nation." Moreover, the Petitioner asserts she "intends to continue her career as the Head of Marketing and sales, where she will plan, direct, coordinate marketing policies and programs," and her "ability to work in this vital sector will enhance the United States economy through her own company." As indicated, the Petitioner initially claimed that she intended to "continue working with American companies that require [her] specialized knowledge, years of experience, and significant expertise." However, in response to the Director's RFE, the Petitioner asserted that she intended to develop her own marketing company and submitted a business plan.³ The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of creating [REDACTED]

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the record contains evidence relating to the marketing manager profession and associated industry reports and articles, the Petitioner must demonstrate the national importance of her specific, proposed endeavor rather than the importance of marketing managers to the U.S. economy. 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.

In addition, the Petitioner stresses her "seventeen (17) years of progressive, professional experience in marketing." The Petitioner's experience and abilities in her field 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 *Dhanasar*'s first prong.

Moreover, 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 did not offer specific information and evidence to corroborate her assertions that the prospective impact of continuing her work as a marketing manager 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, the record does not show through supporting documentation how her marketing management

³ The Petitioner's "Professional Plan & Statement" and initial résumé do not mention [REDACTED]

stands to sufficiently extend beyond the businesses that might employ her, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not show that her initial proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show any benefits to the U.S. regional or national economy resulting from her marketing manager position would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

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. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.⁴

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated eligibility 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.

⁴ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that “courts and agencies are not required to make findings on issues in 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).