



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

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

In Re: 23069363

Date: MAR. 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur with experience in the baking industry, 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).

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. 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 United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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 U.S. Citizenship and

Immigration Services (USCIS) may, as matter of discretion,¹ 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.

II. ANALYSIS

The Petitioner earned a bachelor's degree in business administration from [redacted] in Brazil in 1999 and completed a one-year post-graduate program in industrial administration at the [redacted]. The record reflects she has since gained over 15 years of experience as an entrepreneur in the baking industry in Brazil, where she served as partner, executive director, and business advisor with [redacted] between 1999 and 2014. The documentation submitted shows that [redacted] specializes in the production and distribution of industrial bakery machinery. At the time she filed this petition in December 2016, the Petitioner provided a resume indicating that since October 2014 she had been employed as a market research analyst by [redacted] Florida, after the sale of the company to [redacted].²

The Director determined that the Petitioner established her eligibility as a member of the professions holding an advanced degree.³ 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 of the *Dhanasar* framework, “substantial merit and national importance,” focuses on the specific endeavor that the individual proposes to undertake. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner indicated on the Form I-140, Immigrant Petition for Alien Worker, that she intends to work in the United States as an entrepreneur to “[p]lan, direct, or coordinate the operations of public or private sector organizations.” The Petitioner initially provided a personal statement indicating:

I am a professional holding an advanced degree . . . with more than twenty-two (22) years of progressive work in my field of expertise as an industrial administrator. My expertise is well recognized for my achievements and unique methodologies applied in designing and implementing effective international and country specific planning strategies, business plans and process across industries, such as bakery and pastry equipment manufacture and distribution.

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).

² The record indicates that the Petitioner has been the beneficiary of approved nonimmigrant petitions filed by [redacted] for L-1 status (with a validity period from June 2012 to May 2013) and H1-B status (with a validity period from September 2014 to September 2016).

³ The record establishes that the Petitioner holds the foreign equivalent of a bachelor’s degree from an institution of higher education in the United States, and that she has at least five years of progressive, post-baccalaureate experience in her specialty. See 8 C.F.R. § 204.5(k)(3).

....

I am certain that my experience will substantially benefit prospectively the national economy and work conditions in the United States, in a field that is highly sought by employers in the United States of America, that of Business and Industrial Administration

....

I am an expert industrial and business administrator, able to obtain outstanding business results in this field. I have developed a distinguished reputation and I am certain that I will substantially contribute to the improvement of work conditions of U.S. workers reducing as well the risk of penalties and fines of U.S. corporations conducting business or planning to conduct business in Brazil — which certainly holds substantial intrinsic merit in the current global business context

In response to the Director’s RFE dated April 2021, the Petitioner stated that during the “five years of waiting for an answer from USCIS [she] positioned herself in the local market” She submitted an updated resume, indicating that her employment with [redacted] ended in November 2016 and that she now worked as a real estate broker associate with [redacted] Florida. She also provided a “Personal Plan and Statement” reflecting:

Since 2014 I am a Licensed Real Estate Agent with residential and commercial sales experience and recently a Real Estate Broker Associate.

....

[T]his year I have started working with [redacted] I provide real estate investment allocation, commercial and residential real estate sale, purchase, construction, and remodeling . . . [redacted] and I offer a complete service to investors looking to start a business in the U.S. or purchase a residential or commercial property in Florida.

My proposed endeavor in the United States is to continue providing specialized business and real estate advisory services to attract primarily international investments and buyers originating from Brazil and other Latin American countries to the U.S. The goal of the proposed endeavor is to directly contribute to the higher revenues and profits of U.S. companies in the real estate industry and indirectly contribute to the business development and improved performance of the construction, financial, creative, and other complementary industries.

....

The [redacted] and I have a diversified business model, including real estate sale and purchase and investment consulting to all international investors interested in real estate.

The Director determined that the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner's brief indicates that she intends to continue her work as a real estate broker in the United States, "attracting volumes of Brazilian investors who want to relocate to the U.S. or want to buy a vacation home" and "orchestrating a real estate development strategy that targets Brazilians during an historic favorable currency exchange rate."

As indicated, the Petitioner initially claimed that she intended to continue to work as an entrepreneur to "[p]lan, direct, or coordinate the operations of public or private sector organizations" in the field of "Business and Industrial Administration." However, in response to the Director's RFE, the Petitioner asserted that she intended to work as a real estate broker associate with [REDACTED] and submitted the aforementioned Personal Plan and Statement.⁴ The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. See 8 C.F.R. § 103.2(b)(1). Moreover, 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 working as a real estate broker with [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. The Petitioner indicated in her initial personal statement that her endeavor will potentially result in: U.S. job creation; development of international business partnerships; the negotiation of lucrative projects and cross-border business transactions; new investment opportunities; and improvement in the working conditions of U.S. workers. For the reasons discussed below, the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.⁵

In support of her claim that her proposed endeavor has substantial merit and national importance, the Petitioner provided an "advisory evaluation" of her eligibility for a national interest waiver from [REDACTED] a professor at [REDACTED] School of Business. According to the evaluator, the Petitioner's proposed endeavor will entail "work as a business executive in the bakery and pastry equipment manufacturing and distribution industry or another manufacturing related industry for U.S. companies doing business or planning to do business in Brazil."

The advisory opinion discusses the Brazilian economy, explains why Brazil is already viewed as a major target for expansion for U.S. multinational companies, and states that many more U.S. companies are expected to do business in Brazil to take advantage of market opportunities there. The Petitioner must demonstrate the national importance of her specific, proposed endeavor rather than the importance of Brazil as a target for expansion for U.S. businesses. 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."

⁴ The Petitioner's initial resume and personal statement do not mention [REDACTED] or working in the real estate field.

⁵ While we may not discuss every document submitted, we have reviewed and considered each one.

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 stressed her “more than twenty-two (22) years of progressive work in my field of expertise as an Industrial Administrator.” Further, several testimonials describe the Petitioner’s experience and skills in her field and assert she will be an asset in her “industrial management bakery career in the United States.” For instance, in two letters [REDACTED] [REDACTED] a colleague at [REDACTED] states that the Petitioner helped grow the company to become a baking industry leader by implementing work processes such as the [REDACTED] and negotiating contracts with bakeries for Walmart, Carrefour, and Subway. [REDACTED] indicates that the Petitioner’s trade union negotiations with him improved [REDACTED] wages and working conditions. [REDACTED] merger and acquisition consultant, asserts that the Petitioner’s work on the company’s purchase by [REDACTED] generated “significant revenues for the shareholders of [REDACTED] a representative of [REDACTED] electrical motors supplier, provides that the Petitioner utilized more efficient green engines that reduced the company’s electricity costs.

The aforementioned letters of support, as well as others not discussed in this decision, detail the Petitioner’s effectiveness and skills in her previous work as an industrial administrator in Brazil, but they do not address the national importance of her proposed endeavor. In addition, 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.

As stated, 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 an entrepreneur and advising in bakery and pastry equipment manufacture and distribution 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 the Petitioner’s entrepreneurship and consulting in the baking industry stand 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. For instance, despite indicating that job creation is a potential impact of her proposed endeavor, the Petitioner did not provide information and evidence to illustrate the number of individuals she expects any proposed new business to hire, train and support. She also did not address how her endeavor would have “substantial positive economic effects” based on job creation, and whether it would impact an economically depressed region. 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 entrepreneur 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 initial 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.⁶

III. CONCLUSION

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

⁶ 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).