



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

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

In Re: 25983021

Date: MAY 4, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business administration specialist, seeks second preference 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 EB-2 immigrant 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 qualified for classification as a member of the professions holding an advanced degree, but that she 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates that:

¹ *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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. *Dhanasar*, 26 I&N Dec. at 889.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director determined that the Petitioner's proposed endeavor has substantial merit, but not national importance, and she also did not meet the second and third prong of *Dhanasar*. On appeal, the Petitioner contends that the Director erred by applying a stricter standard of review and not evaluating the evidence in totality, specifically her personal statement, business plan, industry research, letters of recommendation, and expert opinion letters. The Petitioner claims the overall quality of evidence under the preponderance of evidence standard demonstrates her endeavor's national importance.

As the Director already determined that the Petitioner's proposed endeavor has substantial merit, we will only analyze whether the Petitioner's endeavor is of national importance. If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs. 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 Petitioner's proposed employment as stated on Form I-140 is "business administration specialist" who "[d]evelop[s] high-quality business strategies and plans in line with short-term and long-term objective" and "[r]eview[s] sales and activity reports, performance data, and financial statements."² The Petitioner specified in the January 20, 2021 letter that her proposed endeavor is to "apply her education and expertise in the Agricultural and Food Industries . . . for the benefit of the U.S. public, via her employment as the Business Development Specialist at [redacted]"³ The Petitioner described [redacted] as a "self-owned company" based in California importing fruits and vegetables from Mexico and distributing them in the United States. The Petitioner initially claimed that "her proposed endeavor in the agricultural food industry is of national importance and intrinsic merit" because "her industry knowledge, experience, and extensive professional skills will play a significant role in managing the import of fruits and vegetable from Mexico," and "the company will create employment for qualified workers in the Fruit and Vegetable Wholesaling Industry, thereby fulfilling U.S. industry needs and benefitting the U.S. economy." The Petitioner's supporting documents included her personal statement, a business plan, letters of recommendation, two expert opinion letters, the company's registration and articles of incorporation, a permit to import plants and plant products, a business contract, and industry related articles and statistics on fresh produce harvest and distribution.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what she claims 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 her 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 individual documentation submitted by the Petitioner and weighed her entire evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

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 "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. Hence, the Petitioner must demonstrate the national importance of her providing specific entrepreneurial services in importing, distributing, and wholesaling of fresh produce than the national importance of the produce industry in which she intends to work. We acknowledge the Petitioner's submission of "Economic Contribution of the Food and Beverage Industry" report by the Committee for Economic Development. The report discusses the value and importance of the food industry and specifically indicates that California is among the states with the most food and beverage manufacturing establishments in which there are significant markets for food manufacturing output. Although we recognize the importance of the food industry and significant contributions from food suppliers, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

² See the Petitioner's Form I-140, Part 6 (Basic Information About the Proposed Employment), Items 1 and 3, on page 4, filed on January 21, 2021.

³ The letter occasionally refers to the company as [redacted] but the Petitioner's business plan and other corporate documents indicate that the company's name is [redacted]

The Petitioner also submitted two expert opinion letters, one from [redacted] an associate professor of quantitative management at [redacted] University, and [redacted] an agronomist at [redacted] a nanoliquid technology company for agriculture production. These letters explain the importance of the agricultural and food industries but does not discuss specific impact of the Petitioner's proposed endeavor as the business administrator of [redacted]. For example, [redacted] states that "the fruit and vegetable industry is of economic importance to the U.S." and "fruits and vegetables contribute more than \$16 billion to the Northeast U.S. and support more than 70,000 jobs both on and off the farm." Although [redacted] claims that the Petitioner's role "will be substantial in this industry by a developing a customer base and expanding the network of valuable business contacts," she does not indicate any projected U.S. economic impact or job creation specifically attributable to the Petitioner's company that is based in California.

Similarly, [redacted] discusses how U.S. imports of fresh fruit and vegetables have increased substantially and such imports increase consumer choice, keep prices low, and raise the purchasing power for consumers. [redacted] further states that "small businesses, such as [redacted] are essential to their communities, creating jobs and giving back during times of prosperity and challenge" and that "American small businesses have been critical in revitalizing economically distressed areas." However, the Petitioner does not contend that she would operate the company out of economically depressed areas or that she would utilize a significant population of workers in such depressed areas.

In addition, the letters of recommendations describe the Petitioner's experience, skills, and abilities in her field. However, this type of evidence relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. Under *Dhanasar*'s first prong, the issue is whether the specific endeavor that the Petitioner proposes to undertake has national importance. The Petitioner initially submitted a letter from [redacted] a former co-worker at [redacted] an administration and finances director of [redacted].⁴ Although these letters praise the Petitioner's marketing abilities that "maximize[d] outreach and sales of magazines" and "extraordinary proficiency in business management for the agricultural food industry," they only address the Petitioner's past accomplishments and do not address the specific nature of her proposed future endeavor. The Petitioner further supplied additional letters of recommendation from two employees of her own company, [redacted] and two business partners at [redacted]. These letters demonstrate that the Petitioner is actively hiring and building her company but do not offer sufficient information and evidence to demonstrate the prospective impact of her proposed endeavor rising to the level of national importance.

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.* at 889. We 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. On appeal, the Petitioner relies on her personal statement and business plan to show that her

⁴[redacted] is a Mexican company created by the Petitioner, focused on exporting and distributing fruits and vegetables from Mexico to the United States.

business has national importance and emphasizes the following economic estimation asserted in her personal statement:

[REDACTED] has recently bought 320,000 Lbs of HASS avocado in the first trimester of operations. I estimate we will import and distribute more than 500,000 Lbs . . . in the first year.

[REDACTED] is currently buying and importing two loads valued at \$300,0000 . . . every week. I envisage our purchase will increase to \$1,000,000 in the short term.

We are currently in a steep ramp-up and hiring plan to reach over ten employees before January 2023 to accommodate our client growing demand, as well as our expansion to Florida, Arizona, and California.

The Petitioner further highlights the business plan's five-year projection metrics as follows:

The Company currently delivers four fruit and vegetable containers per month, valued at \$36,000 to \$40,000. The Company's goal is to deliver seven containers a month . . . [T]he Company will increase its gross revenues from \$1,924,000 in Year 1, to \$4,448,250 in Year 5.

The Company will hire 15 employees by Year 5, including three Sales Representatives, Four Driver, one Import clerk, one Accountant, one Sales Manager, and four Warehouse Workers. The Company's payroll expenses are expected to start at \$230,000 in Year 1, and increase to \$522,116 in Year 5.

The Petitioner, however, does not offer any relevant supporting evidence to corroborate her assertions raised in her personal statement and business plan. The record does not sufficiently detail the basis for its financial and staff projections, or adequately support how these projections will be realized. While these metrics indicate that the Petitioner's company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from her business would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because the effects of his/her work are primarily limited to his/her school or district, we find that the Petitioner has not established her proposed endeavor in this case will sufficiently extend beyond her clientele and employees to affect the regional or national economy more broadly. *Id.* at 893.

For these reasons, we conclude that the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework and thus, the Petitioner has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, further analysis of her eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose.⁵

⁵ The Petitioner on appeal contends that she seeks a national interest waiver because it is impractical for an entrepreneur to secure a job offer from a U.S. employer, and there is no provision in the Department of Labor regulations permitting a self-petitioning entrepreneur to file a labor certification. As the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, we need not address this claim on the balancing factors under the third prong.

III. CONCLUSION

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

ORDER: The appeal is dismissed.