



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

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

In Re: 26762174

Date: MAY 25, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a consultant, 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 record did not establish that the Petitioner was eligible for and otherwise merited a national interest waiver as a matter of discretion. 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. [If a doctoral degree is customarily required for the specialty, the non-citizen must a United States doctorate or a foreign equivalent degree. (delete if doctorate not an issue)] 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, 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 is currently employed as a global logistics director for a company in the United States, where she coordinates the national and international wholesale distribution of ophthalmic equipment and technology. The record indicates that she has several years of experience in this field. She proposes to continue to work in the United States, providing support and consultancy to United States companies seeking to do business in the Brazilian healthcare market, as well as for Brazilian companies seeking to enter the U.S. healthcare market. The Petitioner indicates that she will accomplish her proposed endeavor either as an employee of a U.S. company or as an independent consultant.

In his decision, the Director determined that the Petitioner is eligible as a member of the professions holding an advanced degree. The record includes copies of her diploma and transcripts from [redacted] University in [redacted] Brazil for a Bachelor of Laws degree, which is equivalent to a bachelor's degree from an accredited college or university in the United States. In addition, a letter from her current employer verifies that she has at least five years of post-degree experience in her specialty. Accordingly, she has established her eligibility for the EB-2 classification, and the sole issue on appeal is whether she has also established that a waiver of that classification's job offer requirement would be in the national interest. We agree with the Director and conclude that she has not.

A. Substantial Merit and National Importance

The first 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. *Dhanasar*, 26 I&N Dec. at 889.

In his decision, the Director concluded that the Petitioner's proposed endeavor has substantial merit, but did not explain his reasoning. The record includes information about the size of the healthcare market in Brazil and the importance of the regulatory provisions for U.S. healthcare products. As such, the Petitioner has shown the substantial merit of her proposed endeavor in the area of business.

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).

Turning to the national importance of the Petitioner's proposed endeavor, the Director noted that while the record included evidence regarding the importance of international trade to the U.S. economy, the focus in the first prong of the *Dhanasar* framework is "the specific endeavor that the foreign national proposes to undertake." *Id.* While national importance may be shown by evidence that the endeavor will have significant potential to employ U.S. workers or other substantial positive economic effects, the Director pointed out that the Petitioner did not submit evidence specifying the expected economic activity or increase in employment opportunities that would potentially occur due to her proposed endeavor. Further, the Director stated that the Petitioner had not demonstrated that the impact of her proposed consulting activities would have implications beyond her employer and its partners and clients to impact the field more broadly.

On appeal, the Petitioner initially focuses on her statement which was included with her initial filing, stating that her plan is not limited to a specific locality but "sets out a mission statement to touch businesses throughout the U.S. that wish to expand their operations" into Brazil. She adds that the national impact of her endeavor "will manifest in the proliferation of her substantial knowledge and expertise regarding regulatory requirements and procedures for new healthcare-related products," and in the "profitability of her business clientele who will implement her methodologies and ... encourage the flow of financial investments in the Latin American healthcare sector." While the Petitioner's consulting services would no doubt impact the ability of her clients to conduct business in either Brazil or the U.S., she does not explain or provide details about how her expertise would "proliferate" or her methodologies would be implemented beyond those clients. Nor does she describe her methodologies or explain how they are novel or would otherwise have a broader impact in the field of international trade or her niche of the import and export of healthcare equipment in Latin America.

The Petitioner also emphasizes the importance of trade to the United States economy, referencing statistics from the International Trade Administration and the U.S. Chamber of Commerce, and states that her proposed endeavor will thus bring significant economic benefits to the United States. However, as noted by the Director, she does not provide evidence to support the economic impact of her specific endeavor, whether as an employee or an individual consultant.

Per the above analysis, the Petitioner has not demonstrated that her proposed endeavor would be of national importance, and she therefore does not meet the first prong of the *Dhanasar* analytical framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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 Director acknowledged the evidence of the Petitioner's education and experience, especially as shown by the reference letters she submitted, but noted that meeting the minimum qualifications as a member of the professions holding an advanced degree is only the preliminary step in establishing eligibility for a national interest waiver. Footnote 3 of the *Dhanasar* decision states that whether

seeking classification as an individual of exceptional ability or as a member of the professions holding an advanced degree, qualification for a waiver of the job offer requirement cannot be achieved just by demonstrating a degree of expertise significantly above that ordinarily encountered in a field.

As also acknowledged by the Director, the reference letters submitted by the Petitioner's former clients describe how she provided services as a consultant regarding the import of medical equipment, and are complimentary of her expertise and the services she provided. However, there are several unexplained discrepancies within the letters themselves, and between the letters and other evidence in the record, that detract from the amount and quality of the Petitioner's work experience in her field. We first note that the Petitioner indicated on her resume that she was the owner of a gas station and convenience store from 2006 to 2015, and that during this period she was "responsible for overseeing day-to-day operations" which included employee scheduling, training, and supervision, determining inventory and stock needs, interacting with vendors and customers, and overseeing all funds. As this description strongly suggests full-time work, it also indicates that the Petitioner's experience as a legal assistant and independent consultant during this period was not full-time.

Another discrepancy between the Petitioner's reference letters and her resume pertains to her consulting work with [REDACTED]. In his letter, the company's founding partner and director states that he met the Petitioner at a conference in 2015, after the company engaged her services to importing medical equipment. However, the Petitioner indicates that this work happened in 2013 and 2014.

Finally, a letter from the executive director of [REDACTED] a medical and computer equipment company, states that he has been in that position since October 2019, and was previously the business director at a company involved in thermal insulation, product identification and tracking systems, and police training simulators since August 2013. However, he states that met the Petitioner at a hospital conference in 2014, and sought her help in importing medical equipment. The letter does not explain why he was importing medical equipment years before beginning employment in that industry.

While the record shows that the Petitioner has relevant education and at least five years of experience in the field in which she proposes to engage in the United States, and is sufficient to show a plan for continued employment in her proposed endeavor, it does not establish that her level of expertise is at least significantly above that ordinarily encountered in that field. After weighing the relevant factors pursuant to the *Dhanasar* analysis, we agree with the Director and conclude that she is not well-positioned to advance her proposed endeavor, and thus does not meet the second prong in the analytical framework.

C. Whether on Balance a Waiver is Beneficial

As a petitioner must meet all three prongs of the framework to be eligible for a national interest waiver, we reserve our evaluation of whether on balance it would benefit the United States to waive the EB-2 classification's job offer requirement. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has established that she qualifies for the underlying EB-2 immigrant classification as a member of the professions holding an advanced degree, but she has not shown that is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.