



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

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

In Re: 28879742

Date: JAN. 04, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the field of business coaching, 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner established her eligibility for EB-2 classification as an advanced degree professional, the record did not establish that she is eligible for, and otherwise merits as a matter of discretion, a 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 as 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 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 Director concluded 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 a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. The Proposed Endeavor

The record reflects that the Petitioner earned the foreign equivalent of a master's degree in health education in 2007 and registered an individual entrepreneur business in Russia in 2009. She indicates that, prior to relocating to the United States in 2021, she provided event management services for individual and corporate clients through her business and, more recently, has included "organizational, motivational and empowerment development training" as part of her service offerings. The Petitioner stated that she launched her first online course targeting Russian women in July 2020 with the aim of sharing her "knowledge and findings concerning motivation and empowerment."

In a statement submitted at the time of filing in February 2022, the Petitioner indicated she will "seek employment as an independent business owner with the endeavor of providing coaching services for personal and business development in the United States, with a focus on female empowerment." In this regard, she noted that she will "further develop and market [her] developed methodologies and professional services in the United States with the goal of convincing more women there to take full control of their lives and to engage in the economy."

In response to a request for evidence (RFE), the Petitioner provided a business plan and certificate of incorporation for [REDACTED], a New York company she incorporated in [REDACTED] 2022. She indicates that she will act as the company's sole owner, chief executive officer and lead coach. The business plan indicates that the company will offer online and in-person courses intended to develop women's "professional and leadership skills, individual traits and soft skills," initially targeting clients in New York with plans to expand operations to seven additional states within five years. The business plan identifies four training courses that will be offered to customers,² and notes that the company will provide event management services as an additional revenue stream.

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 courses are titled "Disclosure of Women's Confidence and Potential," "Creating the Perfect Image of Yourself," "Leadership Development," and "Event Management."

The Director's decision discusses why the Petitioner did not establish that she qualifies under either the second or third prongs of the *Dhanasar* framework. On appeal, the Petitioner reiterates the importance of her proposed endeavor and her qualifications to operate the U.S. company.

B. 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.

The Director's decision does not provide an analysis of evidence submitted under the first prong of the *Dhanasar* framework. The decision refers to the Petitioner's business plan and states that the "the submitted evidence establishes the substantial merit and national importance of the proposed endeavor." However, in evaluating whether the Petitioner established that she is well-positioned to advance the endeavor under *Dhanasar*'s second prong, the Director appears to conclude that the business plan did not, in fact, sufficiently demonstrate a potential prospective impact that satisfies the national importance element of the first prong. For example, the Director observed that although the business plan outlines online training courses the Petitioner intends to offer in the United States, "no evidence was provided regarding . . . the potential economic or social impact of these courses for the [United States]." As the Director's determination concerning the first prong is unclear, and because we make a definitive finding on the second prong below, we will reserve this issue. See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

B. Well Positioned to Advance the Proposed Endeavor

The second prong in the *Dhanasar* framework shifts the focus from the proposed endeavor to the individual. To determine whether an individual is 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.

In applying these factors to the evidence and claims presented, the Director explained in detail why the Petitioner's evidence was insufficient to demonstrate that she is well-positioned to advance the proposed endeavor. On appeal, the Petitioner submits a brief in which she reasserts her qualifications based on her academic credentials and her employment experience. While the Petitioner "respectfully contends that the decision . . . to deny this Form I-140 petition was in error," she does not address the specific evidentiary deficiencies discussed in the Director's decision or articulate how the Director erred.³ Rather, she maintains that she "clearly established the ability to carry forward the proposed endeavor," and summarizes the previously submitted evidence. For the reasons provided below, we

³ An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. See 8 C.F.R. § 103.3(a)(1)(v).

agree with the Director's determination that the record does not establish the Petitioner is well-positioned to advance the proposed endeavor. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

In determining that the Petitioner did not meet her burden to satisfy this prong, the Director acknowledged her education, her registration as an individual entrepreneur in Russia, and reference letters from clients and other business contacts which describe ten projects or activities she completed between 2016 and 2021. The Director found this evidence established "some success in event organizing and facilitating trainings," but noted there was no evidence that the events and activities were provided through the Petitioner's business. As noted, the record documents that the Petitioner registered an "individual entrepreneur" business in Russia in 2009; however, the record contains little evidence regarding her business in Russia and its ongoing operations beyond her own statements. She did not provide supporting evidence of the scope and size of the company, such as its income, number of employees, organizational structure, and geographic reach in support of her claim that she has a record of success operating a business similar to her proposed endeavor in the United States. The Petitioner's assertion that she is "a known expert service-provider" is not sufficient. As observed by the Director, the Petitioner's reference letters, while highly complimentary of the services she performed, provide limited insight into her past employment because they address only ten short-term events that occurred over a five-year period.

The Director further explained why the evidence submitted at the time of filing and in response to the RFE did not support the Petitioner's claim that she has a record of success in business coaching specifically aimed at empowering and motivating women, which is the primary focus of the proposed endeavor in the United States. The reference letters confirm that she provided a three-day motivational training for female employees of a child development center in 2019 and a four-day "training in the art of elocution" for participants in a beauty contest in 2020. But, as noted by the Director, the evidence did not support a finding that her work has largely been focused on delivery of coaching and training programs for empowerment of women in the workplace.

The Director's decision also acknowledges the Petitioner's claim that she has developed "personal methods for empowerment of women in business" which she has shared through a social media platform and through the launch of a three-module online course. As noted, the Petitioner states that she will "further develop and market [her] developed methodologies and professional services in the United States." However, the Petitioner did not provide supporting evidence demonstrating the existence of the methodology she claims she developed or the associated social media group and training course that she purportedly based on her methodology. Further, as discussed above, the record contains limited evidence demonstrating the scope of the professional services she has provided in the past. Accordingly, we agree that the Petitioner did not sufficiently demonstrate her record of success operating a business similar to the proposed endeavor described in the record.

The Director further determined that the Petitioner did not submit sufficient evidence of progress towards achieving her proposed endeavor, and evidence demonstrating the interest of potential customers, users, investors or other relevant entities or individuals. The submitted business plan does not identify the anticipated start up costs for the Petitioner's new business or identify or document the amount or source of funding needed to commence operations. The Petitioner indicates that she will be the sole owner but has not documented her personal finances to demonstrate that she has the means

for financial support of the new business through her own investments, savings, or other assets, or that she anticipates receiving financial support from any other investors. In addition, we note that certain financial projections outlined in the business plan are not adequately supported. For example, the Petitioner indicates that her company will offer its services in eight U.S. states within five years, but the operating expenses projected in the business plan show no anticipated increases in annual rent expenses consistent with the planned multi-state operations and do not support the stated expansion plan. For these reasons, the Petitioner has not met her burden to show that she has a viable model or plan for future activities and that she is financially well-positioned to advance the proposed endeavor.

In response to the Director's RFE, the Petitioner provided letters of interest from two U.S. businesses. However, the Director noted that the authors of the letters do not indicate an intent to purchase any specific training or services outlined in the Petitioner's business plan and are insufficient to establish a significant level of demonstrated interest in the proposed endeavor. We agree with the Director's determination that these letters demonstrate limited interest in the Petitioner's business from two potential customers; they do not demonstrate that the Petitioner is well-positioned to advance her proposed endeavor of providing business coaching and development training aimed at empowering women in the workplace.

Finally, the Director's decision reflects consideration of an expert opinion letter submitted in support of the petition. The Director explained why the evidence did not demonstrate that she is well-positioned to advance the proposed endeavor and support her projections of future work as described in the business plan. As noted, the Petitioner has not contested any of the Director's specific findings on appeal and instead makes a blanket claim that the Director denied the petition in error. Based on the evidence of record and the foregoing analysis, the Petitioner has not demonstrated that she is well positioned to advance her endeavor under the second prong of the *Dhanasar* framework.

Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve her remaining arguments concerning her eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. at 25; *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

The Petitioner has not established that she meets the second prong of the *Dhanasar* analytical framework. Accordingly, we conclude that the Petitioner has not established 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.

ORDER: The appeal is dismissed.