



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

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

MATTER OF L-F-

DATE: OCT. 4, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an attorney, 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding 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.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver under the *Dhanasar* framework.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met. *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 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.

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.

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

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

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.²

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 a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that she has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner indicated that she intends to continue her work as special counsel to both the [redacted] [redacted] and [redacted].³ She contends that her services for these companies stand "to advance cultural relations between the U.S. and Iran via economic and cultural diplomacy." With respect to her responsibilities at [redacted]⁴, the Petitioner explained that her proposed work as special counsel involves "promoting free and fair trade between U.S. and Middle Eastern countries by active case development, management of client accounts, analyzing statistical and regulatory requirements, identifying case opportunities and guiding international and national teams to implement marketing strategies." In addition, she asserted that her duties include providing advice and assistance to foreign exporters to ensure compliance with U.S. trade laws and sanctions, leading [redacted]'s in-house legal department, negotiating corporate dealings, coordinating international and U.S. regulatory compliance, and handling corporate governance filings.⁵

Regarding her proposed work as special counsel for [redacted], the Petitioner stated:

Her responsibilities at [redacted] include drafting, negotiating, and reviewing various transaction documents including offering documents and memoranda, coordinating and supporting integration planning and tracking new contracts and dealing; facilitating negotiations of transactions and legal documentation for artists and film studios; staying abreast of the company's general corporate, financial and operational matters. She assists in the negotiation and management of key strategic partnerships.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we consider information about her positions with [redacted] and [redacted] to illustrate the capacity in which she intends to work.

⁴ The Petitioner noted that this entity "seeks to advise and provide assistance to American companies, investors and individuals in connection with any potential investments and/or other business and cultural dealings with Iran."

⁵ The record contains a letter of support from [redacted] the Petitioner's father and the founder of [redacted] listing her duties and responsibilities for that organization.

The record includes a letter from [redacted] Executive Producer for [redacted] discussing four "projects which focus on international diplomacy and cultural understanding" that his film company plans to undertake with the Petitioner's involvement. He asserted that one series under development "is titled [redacted] which is a morality tale recast as a futuristic, science fiction, action, fantasy. [The Petitioner] is a co-developer and writer on this project as well as special counsel." In addition, [redacted] stated that another project, [redacted] is planned as a U.S. television series with ten episodes shot in Middle Eastern countries that highlight "people who struggle and take huge risks every day to do what they love. . . . The entire project hinges on [the Petitioner] and her brother's connections to the Middle East." [redacted] noted that a third series under development is [redacted] and that this project will follow American [redacted] during a two-week period with a foreign family in the Middle East "adjusting to and learning a different culture." Finally, he described a fourth film project in development called [redacted] a fictional action series about a [redacted] captain and an [redacted] intelligence officer who team up to fight terrorists in Iraq. With regard to [redacted] and [redacted], [redacted] did not discuss the Petitioner's proposed work for these two series other than her duties as special counsel.

In addition, the Petitioner provided various articles relating to diplomatic and economic relations between the United States and Iran. For example, the record contains articles entitled [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]. While the Director determined that the aforementioned information and evidence shows the Petitioner's proposed work as special counsel for [redacted] and [redacted] has substantial merit, he concluded that her documentation was not sufficient to demonstrate this endeavor's national importance.

On appeal, the Petitioner argues that her proposed endeavor has national importance because it "positively impacts U.S. economic welfare" and "furthers U.S. international relations." She maintains that her role as special counsel for [redacted] and proposed work for [redacted] "enables two American, [redacted]-based companies, to thrive and conduct business." In addition, she asserts that the economic benefit of her services to these "companies supports U.S.'s overall economic and national welfare, particularly since both companies are U.S.-based, pay federal and state taxes, hire U.S. citizens as employees, and enter into business contracts with other American companies."

Regarding her proposed work aimed at furthering U.S. international relations, the Petitioner contends that "she plans to expand business transactions via her special counsel role to two U.S. companies." She asserts that "[s]uch transactions would ultimately further relations between" the United States and Iran and help "both countries move past their dangerous bile of misunderstanding and historical pains." In addition, the Petitioner argues that that her proposed projects for [redacted] and [redacted] will expand U.S.-Iran business relations and provide "an economic boost to the U.S."⁶ She further indicates that through such business dealings "Iranians will have the opportunity to favorably view the U.S. This

⁶ As documentation of [redacted] and [redacted]'s proposed business transactions, the Petitioner presents two "draft" contracts. The first of these contracts is a "Finder's Fee Agreement" between [redacted] and [redacted] Productions. The second contract is a "[redacted] Purchasing Services Agreement" between [redacted] and [redacted]. This evidence, however, is not sufficient to demonstrate that the economic implications of these projects would be attributable to her role as special counsel to an extent that her proposed work holds national importance.

favorable view will be a milestone in the countries' tumultuous past and will move both nations to prosperity.”

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. In *Dhanasar*, we further 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.

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. Although the information in the letters from [redacted] and [redacted] and statements from the Petitioner reflect her intention to provide valuable services to her employers and clients, she has not offered sufficient evidence to demonstrate that the prospective impact of her proposed endeavor 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, we find that the record does not adequately corroborate the Petitioner’s assertions that her proposed endeavor stands to sufficiently extend beyond her employers and the companies they do business with to impact U.S. foreign trade or the film industry more broadly at a level commensurate with national importance. Nor has she shown that her particular services for [redacted] and [redacted] would have broader implications in furthering U.S. standing in the Middle East or advancing cultural relations between the United States and Iran.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the appeal brief alludes to a possible boost to the U.S. economy resulting from projects she will pursue on behalf of [redacted] and [redacted] the record does not include sufficient evidence regarding any projected U.S. export growth or job creation attributable to her special counsel work. The record does not show that benefits to the regional or national economy resulting from the Petitioner’s projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

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.

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. The appeal will be dismissed for the above stated reasons, with each considered as an

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independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of L-F-*, ID# 6600817 (AAO Oct. 4, 2019)