



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

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

In Re: 10183910

Date: APR. 19, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an administrative services specialist, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, 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 Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and 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 EB-2 classification and a national interest waiver.

In these 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. 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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, 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 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², 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

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) (*NYS DOT*).

² 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 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.

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 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.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner presented an “Associate’s Degree in Foreign Trade Management” from [REDACTED] (2006), a certificate stating that she completed a “University Extension Course of Business Logistics” at [REDACTED] (2004), a “Certificate of Lato Sensu Graduate Course in Business Administration” from [REDACTED] (2008), and an academic transcript

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

for coursework at [redacted] University (1999-2003).⁴ The Petitioner did not provide evidence to establish her Brazilian credentials' equivalency to either a U.S. baccalaureate degree or U.S. advanced degree. See 8 C.F.R. § 204.5(k)(3)(i)(A) and (B). Accordingly, the Petitioner has not established that she qualifies as a member of the professions holding an advanced degree.

B. Exceptional Ability

The Petitioner asserted that she meets at least three of the regulatory criteria for classification as an individual of exceptional ability. In denying the petition, the Director determined that the Petitioner fulfilled only the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) and the membership in professional associations criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

In the appeal brief, the Petitioner maintains that she also meets the ten years of full-time experience criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) and the certification for a particular profession criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C). After reviewing the evidence, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Petitioner's "Associate's Degree in Foreign Trade Management" and "Certificate of Lato Sensu Graduate Course in Business Administration" are sufficient to meet this regulatory criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

As evidence of her ten years of experience as an administrative services specialist, the Petitioner presented letters from [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted] but these letters did not state that her experience was "full-time." Accordingly, the Petitioner has not demonstrated that she meets the requirements of this regulatory criterion.

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

The Petitioner presented her "Legal Expert Certificate" from the "Regional Business Administration Board of [redacted], [redacted] stating she is "duly qualified to perform expertise services in Administration." We conclude that this certification for her occupation is sufficient to satisfy this criterion.

⁴ The academic transcript for coursework at [redacted] University did not indicate that the Petitioner received a degree.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Petitioner contends that her “Legal Expert Certificate” from the [redacted] also meets this criterion. The record includes a resolution from Brazil’s “Federal Administration Board” stating that “Regional Boards of Administration were created to monitor and regulate” business activities. This resolution further indicates that registration with Regional Boards is available to “Associate Degree Course” graduates in the “Management and Business Fields.” While the Petitioner’s “Legal Expert Certificate” indicates that [redacted] determined that she “was in good standing” and therefore “duly qualified to perform expertise services in Administration,” the evidence does not identify her as “member” of the [redacted]. Nor has the Petitioner demonstrated that [redacted] has a membership body comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association. For the aforementioned reasons, we withdraw the Director’s determination that the Petitioner meets this criterion.

For the reasons set forth above, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

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 the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding her claim of eligibility under *Dhanasar*’s first prong, the Petitioner stated that she intends to continue to work “as an Administrative Services Specialist in the United States.” She asserted that her proposed endeavor involves assisting “U.S. companies in a variety of industries to optimize their businesses through the development and implementation of business administration solutions. I will plan, direct, and coordinate the support services of organizations to improve their operational efficiency.” The Petitioner further explained that her undertaking includes preparing “managerial reports, executive communications, and corporate presentations.” She also listed 20 “open job positions that match my professional experience and qualifications.”⁵ In addition, the record contains two letters from [redacted] [redacted] indicating that the Petitioner has worked for the company as an Executive Assistant since April 2019 and listing her administrative duties.⁶

The record includes information about the function of Administrative Services Managers, the outlook for the U.S. management consulting industry, the benefits of operations management, the value of

⁵ Included among her list of 20 prospective “positions found via LinkedIn and Indeed” were “Administrative Services Manager” jobs at Medline Industries, Mathematica, Facebook, and University of Arizona, for example.

⁶ 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 will consider information about her current and prospective positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* framework.

foreign direct investment (FDI) to the U.S. economy, foreign companies' contribution to U.S. employment levels, and economic activity generated by foreign multinational enterprises. In addition, the Petitioner provided articles discussing the value of general management positions, operational innovation as a contributor to business growth, the benefits of FDI, and international investment as a contributor to our country's economic growth. The record therefore shows that the Petitioner's proposed work as an administrative services specialist has substantial merit.

In determining national importance, the relevant question is not the importance of the field, 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.

In her appeal brief, the Petitioner asserts that her proposed endeavor stands "to promote FDI in the nation."⁷ She contends that her undertaking will benefit "the U.S. economy, and the domestic job market, by raising industry and economy-wide aggregates, as well as by providing higher than average paying jobs for U.S. citizens." The Petitioner further argues that her proposed work "progressively enhances the U.S. business ecosystem, which is essential for a healthy, and growth-based economy." Additionally, she states her endeavor will benefit our country through "U.S. job creation," "effective business advisory within multinational environments," and "business consulting services to U.S. companies."

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 Petitioner's statements reflect her intention to provide valuable administrative services for her U.S. employer and future clients, she has not offered sufficient information and 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 conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her employer and clientele to impact her field or the U.S. economy more broadly at a level commensurate with national importance.

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. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's administrative services 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.

⁷ The Petitioner does not sufficiently explain how her proposed work as an Administrative Services Specialist or Executive Assistant involves her bringing substantial levels of FDI to our country.

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

The Petitioner has not established that she satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude 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 independent and alternate basis for the decision.

ORDER: The appeal is dismissed.