



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

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

In Re: 12459233

Date: AUG. 30, 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 information systems manager, 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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

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.

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 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)

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*).

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).

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

The Petitioner's proposed endeavor is to provide technological services to U.S. companies as an information systems manager. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. At issue before us 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.

The Petitioner submitted a professional plan and statement, indicating that she intends "to continue using [her] expertise and knowledge in the field of Information Technology, working as an expert in Information Systems Management." Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner stated:

My career plan in the United States is to use the knowledge I have acquired to work on large scale projects with high complexity Information Technology Systems Project Management, where I will plan, coordinate and direct computer-related activities for a plethora of industries. I plan to maintain, using my intimate knowledge of business intelligence, innovation, cyber security, IT strategy, and integrated business solutions, to directly help companies with their information technology systems. I am experienced in the development of projects and integrated solutions by implementing, managing, and optimizing IT processes. I will work to improve business intelligence and IT security systems. My objectives are to analyze the departments' needs, designing computer manuals, identify flaws, development errors, security breaches, vulnerabilities, and updating operating systems for my clients. I intend to continue utilizing my exceptional expertise in the field of IT as an Information Systems Manager, thus providing expert technological services to U.S. companies that require my unique skill set to further their technological advances and financial gains, therefore benefitting the economy.

The Petitioner also submitted industry reports and articles discussing the benefits of business intelligence solutions and the negative impact of data breaches on company infrastructures, noting that her endeavor will impact the United States by "enhancing the technological, business, and security of U.S. companies." The Director found that the Petitioner's proposed endeavor has substantial merit. The record includes information demonstrating the value of cybersecurity and integrated information technology solutions and their positive impact on the U.S. economy.

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

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

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.

The Director requested additional evidence demonstrating that the proposed endeavor had national importance. In response, the Petitioner indicated that “she intends to prospect job opportunities” within U.S. companies, as well as provide her IT services on a consultancy basis. She further indicated that her long-term goal would be to open her own business intelligence firm, which would improve work processes and implement information and data systems “suitable for her served clients.” In an updated personal plan and statement, she claimed that she “will continue to offer [her] specialized IT services as a business analyst, and also provide professional consultations to businesses in any sector that wish to improve their business intelligence and IT tools.” Additionally, she stated that she “will require a team of technicians, thus generating jobs and training professionals to become a strong and competent workforce in the country.”

The Director found that the proposed endeavor did not have national importance, noting that the Petitioner had not shown that her proposed work as an information systems manager would impact the information technology field more broadly than a single employer, client, or project. On appeal the Petitioner argues that the Director’s finding was erroneous. She highlights her extensive experience in the field, noting that she will rely on the expertise gained throughout the course of her career to “assist U.S. organizations in designing, developing, and implementing new business tools and resources aimed at improving, or rather restricting, their IT logistics,” and “rectify such companies’ operational errors – thus preventing corporate losses – through the development of IT-based tools.” She referred to previously submitted industry reports highlighting the role of information technology professionals and the importance of information technology advances on the economy, and concluded that her proposed endeavor will lead to a more efficient U.S. business ecosystem and contribute to nationwide economic growth.

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 IT solutions and consulting services for her future employers and 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, the record does not show that the Petitioner’s proposed IT solutions and consulting work has implications beyond any individual client or company at a level sufficient to demonstrate the national importance of her endeavor. She has not demonstrated that the specific work she proposes to undertake has broader implications on a national or global level.

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. Specifically, while the Petitioner repeatedly mentions her extensive career history and past consulting projects to which she contributed, she has not shown that her proposed IT consulting activity stands to provide substantial economic benefits in the United States. We note her assertion that her endeavor “will require a team of technicians, thus generating jobs.” Without

sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, however, the record does not show that benefits to the U.S. regional or national economy resulting from her IT consulting services would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Assertions made without supporting documentation are of limited probative value and do not carry the weight to satisfy the Petitioner’s burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998).

Accordingly, the Petitioner has not established that her proposed work meets 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 conclude that she 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.