



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

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

In Re: 12305081

Date: JULY 14, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing 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 qualified for classification as a member of the professions holding an advanced degree but 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 requested benefit. 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. . . . the 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 (AAO 2016).<sup>1</sup> *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a 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.

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)

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<sup>1</sup> 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*).

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.<sup>2</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. Although the Director found substantial merit in the proposed endeavor in the field of marketing, the Director concluded that the record does not establish that the proposed endeavor has national importance. The Director also concluded the record did not satisfy the third *Dhanasar* prong, without addressing the second prong. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner initially described the endeavor as a plan “to advance her career as a [m]arketing [m]anager, planning, directing, and coordinating marketing policies and programs that will enhance, substantially, the United States economy.”

The Petitioner also described the endeavor with verbatim language from the Occupational Information Network (O\*NET) summary report for “Marketing Managers,” as follows:

- Identify, develop, or evaluate marketing strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors.
- Formulate, direct, or coordinate marketing activities or policies to promote products or services, working with advertising or promotion managers.
- Evaluate the financial aspects of product development, such as budgets, expenditures, research and development appropriations, or return-on-investment and profit-loss projections.
- Use sales forecasting or strategic planning to ensure the sale and profitability of products, lines, or services, analyzing business developments and monitoring market trends.
- Direct the hiring, training, or performance evaluations of marketing or sales staff and oversee their daily activities.<sup>3</sup>

The verbatim language from the O\*NET summary report does not establish what the specific endeavor would entail, beyond matching the generalized tasks of positions in the same occupational category, nor does it establish how the proposed endeavor may have national importance.

The Petitioner further stated that “as someone who possesses an intimate knowledge of [m]arketing in Brazil and Latin America, there is no doubt that she would work in the United States in an area of substantial merit and national importance.” In response to the Director’s request for evidence, the Petitioner elaborated that, through the endeavor, she would:

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

<sup>3</sup> See O\*NET OnLine Summary Report for “11-2021.00 – Marketing Managers,” <http://www.onetonline.org/link/summary/11-2021.00> (last visited July 14, 2021).

continue working with American companies that require my specialized business knowledge, my vast experience in leading successful sales teams, and my high-level of expertise in the industry. I intend to continue designing marketing strategies, carrying out market research, prompting the growth of internationally important industries, such as [t]elecommunications and [e]ntertainment, and maintaining positive working relationships with peers and colleagues. This will help facilitate company growth, as well as identify viable opportunities for business development via cross-border contracts, specifically the Latin American and American markets which are the two largest in the world.

My proposed endeavor presents significant importance to the national interests. Marketing is not simply an important part of business success—it is the business. Everything else in the business depends upon marketing. . . .

In the decision, the Director concluded that “the evidence is insufficient to establish that the [P]etitioner’s proposed endeavor otherwise stands to have broader implications rising to the level of national importance. The evidence is insufficient to show that [her] proposed endeavor will impact the field more broadly than a a [*sic*] single employer, client, or project.”

On appeal, the Petitioner reiterates her general plan “to actively apply her marketing and sales expertise in the business field to benefit companies and consumers alike” and asserts that “she will enhance the country’s national interests by broadly enhancing commercial interests and stimulating the domestic labor force in the United States.” The Petitioner also discusses her career and prior accomplishments in Brazil, and informs that she has been working as a research specialist at [redacted] in [redacted] Florida, since March 2019, where she is “responsible for gathering market research from [redacted] on various topics.” The Petitioner also summarizes the “role and importance of marketing” in general. The Petitioner further asserts that the “proposed endeavor will affect a wide range of business functions, and will ultimately help increase the flow of money in the U.S. on a national level—as clients and customers will be able to purchase products or services from anywhere in the country—which will improve the competitive advantage of U.S. companies, both nationally and internationally,” without elaborating on how the endeavor would affect any particular business.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

The proposed endeavor of marketing benefits the Petitioner’s employer(s); however, the record does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner’s employer(s), as contemplated by the first *Dhanasar* prong. See *Dhanasar*, 26 I&N Dec. at 889. For

example, although the Petitioner asserts that she “will produce significant national benefits, due to the ripple effects of her professional activities,” the record does not establish whether the potential to employ U.S. workers is significant, and whether the potential positive economic effects would be substantial. Petitioners bear the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361. Similarly, the record does not establish how the proposed endeavor of working as a marketing manager for one or more companies rises to the level of broader implications within the field, as contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner’s statements on appeal regarding her expertise and prior career accomplishments in Brazil address aspects of the second *Dhanasar* prong, they do not address how the proposed endeavor in the United States has broader implications beyond her immediate employer(s), as required by the first *Dhanasar* prong. *See id.* Moreover, the Petitioner’s focus on appeal on the “role and importance of marketing” in general does not address aspects of the specific endeavor and how the performance of the planned activities under the endeavor would have broader implications, rising to the level of national importance as contemplated by *Dhanasar*. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.