



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

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

In Re: 26081031

Date: APR. 17, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur who owns an accessory and clothing brand, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner's proposed endeavor has national importance, that the Petitioner is well positioned to advance her endeavor, or that there is a national interest in waiving the requirements of a job offer and, thus, of a labor certification. 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

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).

Profession is defined as 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 into the occupation.¹ 8 C.F.R. § 204.5(k)(3).

¹ Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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 USCIS may, as matter of discretion,² 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.³

II. ANALYSIS

A. Eligibility as a Member of the Professions Holding an Advanced Degree

To establish eligibility for this classification as a member of the professions holding an advanced degree, a petitioner must submit an official academic record of an advanced degree or an official academic record of a baccalaureate degree along with letters from current or former employers; these letters must establish that the petitioner has at least five years of progressive post-baccalaureate experience in the specialty for which the petitioner has requested classification.⁴

As evidence of her education and experience, the Petitioner submitted a copy of her degree from [redacted] State Institute of [redacted] in Uzbekistan showing that she received a bachelor’s degree in “Regional Studies/Economy of Turkey.” She also submitted a translated copy of her academic record, a curriculum vitae, and letters from previous employers and from a manager for a volunteer opportunity. The Director determined that the Petitioner met the advanced degree requirement through her attainment of a baccalaureate degree and a minimum of five years of progressive post-baccalaureate experience in her specialty. Based on the evidence of record, we do not reach the same conclusion for the following reasons.

The record does not contain sufficient evidence to establish that the Petitioner’s degree is the foreign equivalent of a U.S. baccalaureate degree. The record includes a letter entitled “Analysis and Advisory Evaluation of the Request for National Interest Waiver” from an associate professor at [redacted] State University with expertise in the area of business administration and marketing. While the author states that he has served as an evaluator “providing a detailed analysis of the academic background and occupational experience that a person has received outside the United States,” the opinion letter does not evaluate the Petitioner’s education or provide an evaluation of her combined education and employment experience; the letter outlines an argument for why the Petitioner should receive a national interest waiver based on “testimonials and documentary evidence provided.” The sources of that evidence are not identified in the letter; only quotes from the Petitioner’s letters of support indicate that the author reviewed those letters or portions of those letters, and the letters themselves refer to the

² 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).

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

⁴ See 8 C.F.R. § 204.5(k)(3)(i).

Petitioner's performance as part of a few specific projects or applaud her value as an employee. In addition, throughout the record, the Petitioner alternately refers to her degree's area of study as "Regional Studies" or "Economics," and on appeal she states she "has been granted the U.S. equivalency of a Bachelor of Marketing." The record, however, does not contain sufficient evidence to establish a specific field of study to which the Petitioner's foreign degree equates. These unresolved inconsistencies in the record cast doubt on the credibility of the documents submitted.⁵

Further, it is not clear whether the Petitioner's work history qualifies as progressive experience in the specialty for which she seeks classification. The Petitioner intends to run a company that designs and sells clothing and accessories, and, on appeal, she claims her qualifications in the specialty field of marketing. While the letter from her employer during her time as a financial director confirms that she worked with the company for two years, the letter does not contain evidence of her duties at the company.⁶ A letter from her employer during her time as an assistant marketing manager describes her duties and confirms her employment as spanning just over three years; however, it the record does not demonstrate that the Petitioner has a total of at least five years of experience in the specialty.⁷

Finally, the record does not include evidence to establish that the Petitioner's intended job as the owner of an e-commerce business selling apparel and accessories is one that requires, at minimum, a baccalaureate degree for entry into that occupation.⁸ The Petitioner has not established that she is a member of the professions holding an advanced degree.

B. National Interest Waiver

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 Petitioner initially stated that she intends to operate an e-commerce business selling apparel and accessories created by her company and by women entrepreneurs, "with the aim of assisting small business owners in achieving financial independence and contributing to the US economy," committing to donate ten percent of her profits "to women empowerment encouraging women's education." The Director determined that, while the Petitioner's endeavor has substantial merit, the endeavor does not have national importance; he stated that the Petitioner had not demonstrated that her endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects as contemplated by *Dhanasar*. On appeal, the Petitioner asserts that the Director's decision to deny the petition was in error and that, based on the evidence of record, she qualifies under the *Dhanasar* prongs. Upon review of the record, we agree with the Director's decision.

⁵ See *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

⁶ The letter must provide the name, address, and title of the employer, and a description of the Petitioner's experience. See 8 C.F.R. § 204.5(g)(1).

⁷ See 8 C.F.R. § 204.5(k)(2).

⁸ See 8 C.F.R. § 204.5(k)(3).

The Petitioner originally described her endeavor in a letter. In response to a request for evidence (RFE), the Petitioner submitted a business plan for a limited liability company registered in [] New York. The business plan details the Petitioner's intent to design, manufacture, and sell sustainable clothing via e-commerce, creating eleven jobs over five years. The business plan refers only to in-house employees and the company's possible use of contractors; there is no mention of the involvement of other entrepreneurs or the Petitioner's original intention of "assisting them in their marketing needs." While the business plan emphasizes the growing demand for "modest fashion" among certain populations, the plan does not detail and is not otherwise supported by a method of capitalizing on that demand in a manner that would serve the national interest. The record does not include sufficient evidence to show that the scope of her endeavor extends beyond the operation of a small business providing donations to local chapters of charitable organizations.

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.

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. Similarly, the record here does not establish that the Petitioner's role as the owner of a business manufacturing clothing would impact the industry more broadly, as opposed to being limited to the company's anticipated eleven employees and expected customer base with a preference for specific prints and fabrics created sustainably. Further, she has not demonstrated that her specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the U.S. Therefore, we conclude that the Petitioner has not established the national importance of her proposed endeavor.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified basis for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); 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 her eligibility for the EB-2 classification, nor has she 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. Thus, the appeal will be dismissed.

ORDER: The appeal is dismissed.