



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

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

In Re: 24807538

Date: FEB. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, seeks employment-based second preference (EB-2) 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 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 establish that a waiver of the classification's job offer requirement would be in the national interest. 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

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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

¹ *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).

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director determined that the Petitioner was a member of the professions holding an advanced degree.² The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner's academic background includes her undergraduate degree in civil engineering and graduate coursework in business administration. She states that she is a civil engineer with 16 years of experience in "project management, strategic planning, real estate analysis for corporate expansion, and budgeting." Her work has included modernizing internal (fire, electrical and air conditioning) systems of older buildings, as well as overseeing the construction and maintenance of large-scale commercial buildings. Since 2003, she has been a senior engineer with Brazil's [REDACTED] institution, directing the "planning, management and execution of construction projects to build banks, bank branches, offices, ATMs, and corporate office facilities." The Petitioner describes her proposed endeavor as follows:

My career plan in the United States is to work as a Civil Engineer with American construction companies and commercial infrastructure developers that require my specialized knowledge, in-depth experience, and expertise as a Civil Engineer. I intend to continue implementing valuable services in constructing and renovating commercial buildings, such as banks, corporate administrative offices, and other facilities that enable business activities and contribute to the U.S. economy.

With the initial filing the Petitioner submitted evidence of her education and experience, a personal statement describing her proposed endeavor and claimed eligibility for a national interest waiver, an expert opinion letter, recommendation letters and evidence of her past accomplishments, and articles discussing the shortage and demand in the field of engineering broadly.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish her eligibility for the national interest waiver. He concluded that the Petitioner established that the proposed endeavor had substantial merit. However, the Director determined that the Petitioner had not established that the proposed endeavor was of national importance, that she was well positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

In the RFE, the Director noted that the record lacked evidence to corroborate the Petitioner's claim that her proposed endeavor had broad implications on the field of civil engineering. He also noted that, although the record included evidence attesting to the Petitioner's accomplishments, it lacked

² The record demonstrates that the Petitioner holds the equivalent of a U.S. bachelor's degree in engineering earned in 2004, followed by more than five years of progressive experience as a civil engineer. See 8 C.F.R. § 204.5(k)(3)(i)(B).

evidence of the Petitioner's plans or progress in achieving her proposed endeavor or interest from potential clients or investors.

The Petitioner's response to the RFE includes an updated personal statement, a detailed business plan dated June 2022, and various articles and industry reports. In her updated personal statement, the Petitioner states that she intends to develop a consulting company in Florida to provide services in civil engineering.

After reviewing the Petitioner's RFE response, the Director concluded that the Petitioner had not demonstrated that her proposed endeavor had national importance, that she is well positioned to advance her proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

On appeal, the Petitioner does not submit a brief or new evidence. She states that the Director "did not objectively evaluate all evidence" under the preponderance of evidence standard, but "instead, they imposed [a] novel standard."

A. Substantial Merit and National Importance

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.

As noted above, the Director concluded that the Petitioner's proposed endeavor in the field of civil engineering has substantial merit. However, he determined that the Petitioner did not demonstrate how her proposed endeavor will broadly impact the field of civil engineering to establish national importance. He noted that the Petitioner's intention to create her own company to further her proposed endeavor and the business plan dated June 2022 were created in response to the RFE and did not demonstrate her eligibility when the petition was filed in December 2019.³

In attempt to support a finding of national importance, the Petitioner submits articles and industry reports discussing the role of Science Engineering Technology and Mathematics (STEM) careers in the economic growth, as well as the positive economic impact of immigrant entrepreneurship. She highlights the economic importance of STEM professionals by providing statistics on STEM industries' high potential for growth, as well as the demand for and shortage of engineers. Similarly, the Petitioner cites statistics on growth potential for the construction and real estate fields. Despite these claims, the record contains insufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her specific work and proposed endeavor. The record does not show benefits to the U.S. regional or national economy resulting from the Petitioner's employment would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

³ A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Although the Petitioner submits articles and industry reports describing the importance of engineering on economic growth, many of these reports are not specific to the field of civil engineering.⁴ A 2018 report from Deloitte and the Manufacturing Institute discusses shortages in U.S. manufacturing, but does not mention construction, real estate or civil engineering. A 2017 report titled “Engineering transformation for a 4.0 world” discusses how managers can work effectively with engineers but does not mention civil engineers and the Petitioner does not explain its relevance to her proposed endeavor. An article titled “Engineering Talent Shortage Now Top Risk Factor” specifically relates to semiconductor engineering with no discussion of civil engineering. A 2016 report titled “Engineering and economic growth: a global view” is not specific to civil engineering or even to economic growth in the United States and the Petitioner does not explain its relevance. An article titled “Total Value of All U.S. Homes: \$31.8 Trillion” provides statistics on home values in certain U.S. markets, however, the Petitioner does not explain its relevance, as her proposed endeavor does not mention home construction and the article does not include any statistics on the market in Florida, the location of her intended consulting business. Nor does the Petitioner explain the relevance to her proposed endeavor of additional articles discussing the economic impact of immigrants and entrepreneurship.

Although we agree that STEM fields are important and may be the subject of national initiatives, we conclude that this does not necessarily establish the national importance of the Petitioner’s specific proposed endeavor. When 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 id.* at 889. Much of the Petitioner’s evidence relates to the importance of the industries and professions, rather than her specific proposed endeavor. Even considering the articles, reports, and statistics collectively and in the totality of circumstances, we still conclude that they do not support a finding that her specific proposed endeavor has national importance.

The Petitioner also submits her business plan dated June 2022 to support the national importance of her proposed endeavor. The Petitioner states in response to the RFE that she intends to launch her business in 2022. The business plan is dated June 2022, more than two years after the petition’s filing. As noted by the Director, this document was not created until after the Director issued the RFE in February 2022. Accordingly, we agree with the Director that this evidence does not demonstrate the Petitioner’s eligibility at the time of filing, as required by 8 C.F.R. §§ 103.2(b)(1).

Even if the business plan had been submitted with the initial filing, we conclude that the document does not demonstrate the national importance of the Petitioner’s proposed endeavor. To establish national importance, the Petitioner must demonstrate the proposed endeavor’s impact. In *Dhanasar*, we 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.* at 889. Although the Petitioner states that her experience in budgeting, retrofitting and construction will contribute to the U.S. economy, she has not supported these assertions with sufficient independent, objective evidence. The projections of the Petitioner’s company’s revenue and job creation as stated in the business plan are also unsupported in the record. The evidence does not suggest that the Petitioner’s skills differ from or improve upon those already

⁴ While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner's experience will reach beyond benefitting her own company and clients or have broader implications within the field of civil engineering. The record does not establish that her proposed endeavor stands to impact the field as a whole.

We also note that the Petitioner's business plan is not consistent with her updated personal statement submitted in response to the RFE. In her personal statement, the Petitioner states that she will serve as her company's Chief Executive Officer and Lead Consultant, and that she will fill other specialized positions to create jobs within the United States. The business plan includes a table of "Personnel Projections" indicating that the Petitioner's company will have six total employees within five years. However, another individual is listed as holding the position of Chief Executive Officer and Lead Consultant in each of the company's projected five years. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Petitioner also submits an expert opinion prepared by [redacted] of the [redacted] [redacted] as well as recommendation letters from current and former employers praising the Petitioner's education, experience, past success, personal qualities, and the results she achieved. However, these qualities relate to the second prong of the *Dhanasar* framework, that the individual is well-positioned to advance their proposed endeavor, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner's specific endeavor has national importance under *Dhanasar*'s first prong.

We acknowledge that the expert opinion includes an analysis of the national importance of the Petitioner's proposed endeavor. In his analysis [redacted] states, "Her work in this area is of substantial merit and national importance for U.S. Construction companies doing business or planning to do business in Brazil ... In addition to benefitting the Construction industry in the U.S., she can also help U.S. businesses develop cross-border projects abroad, particularly in Latin America." However, he does not elaborate on how U.S. business involvement in Brazil and Latin America will have a prospective impact on the United States, including the national or global implications on civil engineering, the potential to employ U.S. workers, or the positive economic effects.

Additionally, we note that the Petitioner's description of her proposed endeavor mentions "collaborative works between U.S. and Brazilian companies [... to] provide American companies with new business opportunities and attract foreign investment into the U.S." However, she does not describe an intention to assist U.S. businesses seeking projects in Brazil or Latin America, as the expert opinion discusses. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

On appeal, the Petitioner relies upon the evidence she previously submitted and asserts that the Director imposed a "novel standard" of proof and did not consider the evidence objectively. The Petitioner does not identify the Director's standard or describe how it differs from a preponderance of the evidence. Nor does the Petitioner identify which evidence was not considered. The Petitioner continues to rely upon the asserted merits of the services she will provide, her personal and professional qualities and achievements, and the importance of the construction and engineering fields.

However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose.⁵

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in 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.

ORDER: The appeal is dismissed.

⁵ Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, that he was well-positioned to advance the proposed endeavor, or 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. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response and does not provide any new evidence. The Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner is eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that she meets all of the three *Dhanasar* prongs.