



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

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

In Re: 24227536

Date: JAN. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a statistician, 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 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 she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal.

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 discretion¹, 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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. 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 conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to her proposed endeavor, the Petitioner initially indicated that she intends to continue her career “as a Market Research Analyst, using my expertise in statistical analysis, business intelligence, data mining, and finance, among other areas focused on business decision making, to support success in corporate endeavors in the United States.” She stated that she plans to work with U.S. companies “identifying opportunities and collaborating with business growth, as well as working with multidisciplinary groups through . . . focusing on solving internal and external issues involving departments, suppliers, and customers.” The Petitioner further noted that her undertaking involves analyzing companies’ “potential, studying their markets, and mapping growth opportunities for the business. . . . My work as a market research analyst will support the elaboration of business plans through the collection and analysis of primary and secondary data to study and reduce various levels of risk.”

In response to the Director’s request for evidence (RFE), she asserted that her “job offer involves R&D in Data Science and Storage emerging technologies” and that “there are many vacancies for statisticians on LinkedIn, showing the clear need for a professional as myself.” As indicated above, the Petitioner initially claimed that her proposed endeavor involved continuing her work as a market research analyst. The Petitioner did not claim that she intended to perform research and development in data science and storage. In fact, the record does not reflect her intention to pursue data science and storage technological research prior to the Director’s issuance of the RFE and only offered this proposed endeavor after receiving the RFE. The Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971). Further, the purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), 103.2(b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998). Accordingly, we will not consider the Petitioner’s materially changed proposed endeavor of “R&D in Data Science and Storage.”

The record includes information about the job outlook for market research analysts, marketing consultants, marketing specialists, and search engine optimization and internet marketing consultants. In addition, the Petitioner provided articles discussing immigrants’ positive effect on both the business community and U.S. economy, the value of business intelligence for entrepreneurs, the talent gap in data analytics, the shortage of data scientists in the job market, and ways to address the data science

talent shortage.² She also submitted information about the value of market research in business, business intelligence challenges faced by organizations, the technology industry's use of analytics to bolster its workforce, the value of business intelligence, and the role of highly skilled immigrants in fostering U.S. economic growth. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of her proposed endeavor. The Director stated that the Petitioner had not shown that her undertaking "will impact the field more broadly" or otherwise offers "substantial positive economic effects."

In her appeal brief, the Petitioner asserts that she "has more than twenty (20) years of progressive experience and acumen in the business and intelligence statistics industries." She also points to her bachelor's degree and multiple master's degrees. The Petitioner's education, skills, and knowledge in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner contends that her proposed work "will produce significant national benefits, due to the ripple effects of her professional activities." She states her undertaking "will also contribute to tax revenue, and ultimately help increase the flow of money in the U.S. on a national level, which will contribute to an enhanced U.S. gross domestic product (GDP)." The Petitioner further indicates that her proposed endeavor stands to affect the national economy by "offering economic convenience and agility" to "U.S. corporations in domestic and international markets," "prioritizing the domestic job market . . . through the creation of both direct and indirect employment opportunities for U.S. workers," and "driving competitive advantage for U.S. companies that wish to expand and internationalize their business operations."

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.

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. While the Petitioner's statements reflect her intention to provide valuable market research analysis and business intelligence services for her future U.S. employer and clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises

² The Petitioner has not established that her proposed endeavor stands to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

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 Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her future U.S. employer or 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 regional or national economy resulting from the Petitioner’s business projects 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.

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 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.