



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

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

In Re: 28447143

Date: OCT. 25, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an organizational psychologist, seeks classification as a member of the professions holding an advanced degree. 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. 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 Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the job offer requirement is 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 immigrant 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, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither 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 a matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

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 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.

II. ANALYSIS

The Director determined that the Petitioner qualifies for the EB-2 classification as an advanced degree professional and that the proposed endeavor has substantial merit. However, the Director found that the Petitioner did not establish the national importance of the proposed endeavor nor that, on balance, waiving the job offer requirement would benefit the United States. The Director did not make a finding as to the second prong, whether the Petitioner is well-positioned to advance the proposed endeavor. On appeal, the Petitioner submits a brief and a copy of evidence previously submitted and contends that she has established eligibility for a national interest waiver.

A. Qualification for the EB-2 Classification

As stated above, the Petitioner seeks to qualify for the EB-2 classification as an advanced degree professional. Specifically, the Petitioner claims to possess the foreign equivalent of a bachelor's degree followed by at least five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2) (a U. S. bachelor's degree or the foreign equivalent degree followed by at least five years of progressive experience in the specialty is equivalent to a master's degree). To establish the requisite post-baccalaureate experience, the regulations require that a petitioner submit "letters from current and former employer(s)" that include "the name, address, and title of the writer, and a specific description of the duties performed." 8 C.F.R. § 204.5(g)(1). If this evidence is unavailable, other documentation will be considered. *Id.*

The record shows that the Petitioner obtained the foreign equivalent of a bachelor of science degree in psychology in 2009. Additionally, the Petitioner states that from 2009 to 2012 she was a partner in a human resources (HR) management firm in Brazil, and that from 2013 to 2018 she operated her own consultancy firm in Brazil, offering HR management, organizational psychology, and life coaching services. To demonstrate this experience, the Petitioner submitted reference letters from prior clients who used her consulting services. Although the Director concluded that these qualify as employer letters containing the relevant employment dates and job duties, as required by 8 C.F.R. § 204.5(g)(1), we disagree. While the letters describe the services the Petitioner provided and the timeframe during which the services were rendered, the letters are from clients, not employers. We will consider other documentation to establish experience if employer letters are unavailable, such as in the context of self-employment. *See id.* However, the record is not clear as to whether the Petitioner offered these services regularly and continuously during the timeframes provided and whether these were the Petitioner's only clients, and thus whether operating this business and offering services as an organizational psychologist and life coach was equivalent to five years of progressive experience.

To help establish that the Petitioner's experience operating her business represents at least five years of progressive work experience in the specialty, counsel asserts in a brief submitted in response to the request for evidence (RFE) that:

[The Petitioner] took on the challenge to work for her own business, which she did successfully for nearly a decade in Brazil. As an owner of her own small business, the hours [the Petitioner] was required to work each week were immense, she serviced multiple companies providing occupational psychology training regularly for years on end. It is widely known that small business owners work in excess of 40, 50 or even 60 hours weekly.

In support of this statement, counsel cites to an online article that discusses a survey of small business owners and their workload. But counsel's assertion regarding the Petitioner providing trainings "regularly for years on end" for multiple companies is not evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). The Petitioner's statement does not discuss the specific regularity and consistency of the services she provided, nor do the client reference letters. There is also a lack of clarity regarding the timeframe during which the Petitioner operated her business. Although counsel asserts that the Petitioner operated her business for nearly a decade, the Petitioner states that she operated her business only from 2013 to 2018 and that she worked for a different HR firm from 2009 to 2012. The Petitioner did not provide an employer letter from the firm where she was employed from 2009 to 2012. Additionally, she did not provide documentation related to the operation of her business, such as business registration documents, invoices to or contracts with clients, tax returns or other financials, or other documents that would help establish that the Petitioner operated her business consistently and regularly such that she obtained at least five years of progressive post-baccalaureate experience. The Petitioner would need to address these deficiencies in any future proceedings where attainment of work experience is required to establish eligibility. *See* 8 C.F.R. § 204.5(k)(3)(i)(B); *see also* 8 C.F.R. § 204.5(g)(1).

B. Eligibility for a National Interest Waiver

We turn now to the Petitioner's eligibility for a national interest waiver under the *Matter of Dhanasar* framework. The Petitioner proposes to establish a consultancy firm in the United States, [REDACTED] [REDACTED] "to provide medium-sized and small businesses with specialized human resources consulting services that will aim to contribute to their growth and benefit the United States as a whole." The Petitioner states that she will be the head of the company and its organizational psychologist. She states that the role of a corporate or organizational psychologist is to "consult and work with human resource offices and departments, aiming to increase business efficiency and improve organizational structure, while improving overall quality of life for employees (and their employers)." The Petitioner also states that the company will create and use an artificial intelligence (AI) system that will provide more efficient services. The company business plan states that this AI system "was already conceived by [the Petitioner] and will be fully developed by a team of in-house employees."

1. Whether the Proposed Endeavor has Both Substantial Merit and National Importance

A petitioner may demonstrate their proposed endeavor's substantial merit "in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education." *Matter of Dhanasar*, 26 I&N Dec. at 889. As stated above, the Director determined that the Petitioner established the substantial merit of the proposed endeavor. Based upon the evidence in the record regarding the

importance of HR services and management to business operations, we agree with the Director that the proposed endeavor has substantial merit.

In finding that the Petitioner did not establish the national importance of the endeavor, the Director stated that the record does not show that the proposed endeavor stands to sufficiently extend beyond the Petitioner's organization or its clients, or the individuals the Petitioner would serve as a life coach, to impact the industry or field more broadly. The Director also determined that there was not sufficient information and evidence to illustrate the number of individuals that the business would hire, train, and support, and no evidence to illustrate that the rate of pay that the company intends to pay its current or prospective employees would have substantial positive economic effects to the regional or national economy that would reach the level contemplated by *Matter of Dhanasar*. The Director acknowledged that the Petitioner's statements reflect her intention to provide specialized HR services to her clients but found that the Petitioner did not demonstrate how her individual work as an organizational psychologist and entrepreneur addresses the psychology or HR field on a level commensurate with national importance.

On appeal, the Petitioner asserts that the Director improperly imposed a higher standard of proof than a preponderance of the evidence and did not sufficiently consider the Petitioner's business plan, personal statement, and the opinion letters submitted. The Petitioner contends that the record demonstrates, by a preponderance of the evidence, that the proposed endeavor has national importance.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

The record contains four opinion letters, and the Petitioner emphasizes on appeal that these establish the national importance of the endeavor. Each letter is from a university professor in an HR or business field, and each professor describes their academic, professional, and research backgrounds and states that they are qualified to provide an evaluation of the Petitioner's proposed endeavor. Each of the letters also describes the proposed endeavor in detail, provides background information on the HR field and states the writer's opinion that the proposed endeavor has national importance.

One of the letters was submitted by [redacted] Associate Professor in Strategic Management and Entrepreneurship in the [redacted] School of Business at [redacted] University. [redacted] states that their research and teaching interests include strategic alliances, community development enterprises, organizational legitimacy, and small business and startup funding. [redacted] states that the proposed endeavor has national importance because it will have an impact on HR planning and entrepreneurship on a national level, will have substantial positive economic effects, and impacts a matter that is the subject of national initiatives.

However, we conclude that [redacted] does not provide sufficient support for these conclusions. For example, in discussing how the proposed endeavor will have a national impact on HR planning and entrepreneurship, [redacted] discusses the importance of the HR field and entrepreneurship in general, rather than the impact of the Petitioner's specific proposed endeavor. [redacted] states that "well-versed human resources specialists such as [the Petitioner] can play a crucial role in helping small and medium-sized companies improve their human resources practices" and that "[e]ntrepreneurship is crucial to the expansion of the American economy" Similarly, in concluding that the proposed endeavor will have substantial positive economic effects, [redacted] describes the HR consultancy industry overall and its projected growth nationally. But in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." See *Matter of Dhanasar*, 26 I&N Dec. at 889. Therefore, we conclude that these claims do not sufficiently establish the national importance of the proposed endeavor.

[redacted], Associate Professor of Supply Chain Management at [redacted] University, who states that his expertise is in supply chain management, retail operations, demand planning and forecasting, purchasing and collaboration, and sustainability, also provided an opinion letter in support of the Petitioner. Like [redacted] also states the opinion that the proposed endeavor has national importance because it stands to have a national or even global impact, because it will have substantial positive economic effects, and because it will impact a matter that is the subject of national initiatives. But again, the bases for these conclusions are not well supported by the record or by *Matter of Dhanasar*. In support of the conclusion that the endeavor stands to have a national or even global impact, [redacted] provides a lengthy discussion about the roles and duties of HR managers and their importance to an organization, rather than discussing the potential impacts of the Petitioner's specific endeavor. In concluding that the endeavor will have substantial positive economic effects, [redacted] states that HR is one of the fastest growing fields in the United States and discusses the importance of small businesses to the U.S. economy. Again, [redacted] does not provide his opinion regarding the potential impact of the Petitioner's specific endeavor.

Finally, in support of the claim that the proposed endeavor impacts a matter that is the subject of national initiatives, [redacted] points out that there are many federal laws that govern employment issues, such laws prohibiting discrimination against employees and labor laws establishing a minimum wage, overtime rules, and child labor laws. Although we agree that there are federal laws governing employment in the United States, we do not agree that this establishes that the Petitioner's HR consultancy firm is of national importance. Like [redacted] conclusions as to the national importance of the endeavor are based upon a discussion of the industry overall, rather than the specific proposed endeavor.

[redacted] Associate Professor of Quantitative Management at [redacted] University, also provided a letter expressing the opinion that the Petitioner's proposed endeavor has national importance. [redacted] states that they are an expert in the field of quantitative management. [redacted] provides a detailed discussion on the national implications of the HR management industry, stating that human resources "plays an important part in establishing and strengthening the relationship between employees and leadership" and that the "workforce is the foundation of any business and organization." [redacted] also cites to a study finding that

businesses are having difficulty in finding skilled workers to fill job vacancies. Based on this, [] states the conclusion that “it is clear that professionals like [the Petitioner], who have knowledge and expertise in Human Resources Management, can help to minimize the gap and improve human capital through training, programs, initiatives, and other related activities.”

[] also states the opinion that the proposed endeavor stands to have substantial positive economic effects, and again, bases this conclusion on the importance of small businesses overall to the U.S. economy and the expectation that the HR consultancy market is expected to grow. Similar to [] also opines that the proposed endeavor impacts a matter that is the subject of national initiatives based upon the various federal laws relating to labor and employment, such as the Equal Pay Act of 1963, the Fair Labor Standards Act, and the Workforce Innovation and Opportunity Act, among others. As with the opinion letters discussed above, [] does not provide their analysis and opinion as to the potential prospective impact of the Petitioner’s company and its services, and for the same reasons as discussed above, we do not find [] analysis to be persuasive.

Finally, [], Professor of Management at the College of Business and Innovation at the University [] provides an opinion letter. [] states that they teach courses, publish manuscripts, and advise companies related to HR management and is qualified as an expert in this area. [] opines that the Petitioner’s proposed endeavor stands to have a national impact. [] provides background on the management consulting and HR consulting industries and describes the need for and the role of organizational consultants. [] also discusses the market size of the HR consulting industry in the United States and abroad, and the expectation that the number of jobs in the industry will grow. [] states that the Petitioner’s proposed endeavor impacts national initiatives because consulting firms help businesses remain compliant with federal statutes and regulations. Finally, [] states that the Petitioner’s proposed endeavor will enhance individual and societal welfare because of the importance of HR and organizational consultants to businesses. [] conclusions, like those of the other professors, are based upon an analysis of HR services and consulting in general rather than the Petitioner’s proposed endeavor.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual’s eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the expert opinion letters are of little probative value as they conflate the importance of the HR consulting industry overall with the national importance of the Petitioner’s specific endeavor. Additionally, only one of the writers states that they are an expert in the field of human resource management or consulting, and none of the writers state that they are experts in organizational psychology. The Petitioner emphasizes on appeal that the record contains four separate expert opinion letters each stating their conclusion that the proposed endeavor has national importance. However, rather than providing four separate, cumulative perspectives regarding the national importance of the endeavor, the four letters are substantially similar, repeat much of the same discussion about the industry overall, and do not meaningfully provide additional information or evidence. Eligibility for the benefit sought is not determined by the quantity of evidence alone but also the quality. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77,

80 (Comm'r 1989)). For the reasons discussed above, we conclude that the opinion letters do not establish the national importance of the proposed endeavor.

We turn next to the Petitioner's business plan, which she asserts on appeal was not sufficiently considered by the Director in evaluating the importance of the endeavor. The Petitioner asserts that the business plan establishes that the scope of the Petitioner's work rises to the level of national importance and that the company will provide substantial positive economic effects.

The business plan describes the company's proposed services, marketing strategy, intended organizational structure, and projected financials. The plan also states that the company will create and use an AI system to optimize HR tasks, such as talent sourcing, interview scheduling, candidate evaluation, training and development, and employee engagement. The plan further states that, because these services can be delivered online, the company will be able to reach businesses around the country. The financial projections in the business plan state that the company will hire 9 employees in the first year and have a total of 29 employees by year five. The plan also projects sales of around \$750,000 in year one and around \$2.2 million in sales by year five.

Although the Petitioner's business plan provides detailed information about the company's plan to provide consulting services for its clients, market those services, and hire the necessary employees to execute its organizational strategy, the business plan does not demonstrate how the business stands to have an impact on the HR consultancy or organizational psychology fields that would rise to the level of national importance. In *Matter of Dhanasar*, we gave as examples of nationally important endeavors those that might result in improved manufacturing processes or medical advances. *Matter of Dhanasar*, 26 I&N Dec. at 889. The business plan does not explain how the Petitioner's consultancy services have the potential to result in the type of broad impact that an original mechanical process or a medical advancement would in their respective fields.

We also conclude that the business plan does not establish that the proposed endeavor stands to have substantial positive economic effects or employ U.S. workers at a level that would rise to national importance. Regarding the financials, the business plan does not provide the basis or methodology for the estimates in sales or operating expenses, and as such, we are unable to assess whether the plan's stated revenue projections and job creation estimates are credible. Additionally, the Petitioner has not provided evidence to demonstrate that the creation of 29 jobs, even in an economically depressed area, would result in an economic impact commensurate with national importance. As such, we conclude that the Petitioner has not met her burden to establish that the proposed endeavor stands to have "substantial positive economic effects." *Id.* at 890.

The Petitioner's primary contention on appeal is that the Director generally disregarded the evidence in the record or did not properly consider it. In support, she largely restates the evidence in the record and the arguments already presented in her initial brief and RFE response. We have thoroughly reviewed the evidence in the record and conclude that although the Petitioner asserts that her proposed endeavor has national importance, she offers little corroborative evidence or explanation to support her claims. Although the record reflects the Petitioner's intention to provide valuable HR consulting services to her clients, the Petitioner has not offered sufficient information or 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 extend beyond his students to impact his field more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her company and its clientele to impact the HR management industry or the U.S. economy at a level commensurate with national importance.

2. The Second and Third *Dhanasar* Prongs

The next issue is whether the Petitioner has established the second *Dhanasar* prong, requiring that she be well-positioned to advance the proposed endeavor. However, because the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, she is not eligible for a national interest waiver. Therefore, we need not address whether she has established the remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible). We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

III. CONCLUSION

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

ORDER: The appeal is dismissed.