



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

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

In Re: 28516273

Date: SEP. 18, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a legal analyst and entrepreneur, seeks 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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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. 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

In a definitive statement submitted with the petition, the Petitioner stated that she intends to work as an entrepreneur in the legal field at her company, a registered limited liability company in the State of Florida. She further stated:

My services, provided via my American company, can completely change the way American investors view Latin American countries, and especially Brazil, as these regions have an extremely complex tax system. Tax challenges typically represent a major deal breaker in any investment. It is also worth mentioning that Latin American countries have relevant investment opportunities and excellent shareholder returns and they are looking to expand such wealth in the U.S. However, due to the lack of knowledge of how the tax systems work, companies and investors often end up abandoning the idea of investment, and the U.S. thereby loses on foreign direct investments (FDI). My proposed endeavor will make this investment a reality, resulting in enhanced economic contributions to the United States.

Also, entrepreneurship is good for the U.S. economy. In the United States, small businesses are often called the backbone of the economy. Policies that encourage the growth of small businesses, as well as the role of entrepreneurship in the market, are healthy for the nation at large. For a capitalist economy to thrive, there must be competition, growth, and innovation - which is exactly what my proposed endeavor provides. Successful entrepreneurs are naturally competitive, think outside of the box, and see through many business challenges, explicitly mirroring how an industry or a corporation could benefit from a fresh take on business.

My work will contribute to access to innovation, new business practices, and economic prosperity; it will also generate American jobs, increase national and international integration and productivity, and enhance revenues for the U.S. economy at large. I will do all this through my U.S. company. . . .

The initial filing also included copies of the Petitioner's academic credentials, a copy of her company's business plan, copies of service contracts, an expert opinion letter, letters of recommendation, and industry articles and reports in support of her eligibility.

The Director issued a request for evidence (RFE), noting that the record as initially constituted was insufficient to demonstrate that the proposed endeavor had national importance. The Director observed that the Petitioner's intent to operate a management consulting company, which would offer legal and tax services for companies seeking to do business in Latin America and vice versa, had substantial merit. However, the Director determined that the Petitioner had "not demonstrated that the economic implications of these operations would be attributable to her entrepreneurship to an extent that her proposed work holds national importance." The Director further noted that the record lacked a detailed description of the proposed endeavor that clearly described the undertaking or venture to be accomplished, and cited to evidentiary deficiencies in her company's business plan. As a result, the Director requested a detailed description of the Petitioner's proposed endeavor in order to evaluate her request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner's counsel submitted a letter claiming that the Petitioner's proposed endeavor "will have broad implications, as it is not only national, but international in scope, and will produce significant national benefits, due to the ripple effects of her professional activities." Counsel further emphasized the potential of the proposed endeavor, noting that the Petitioner did not have the burden to establish that the endeavor must succeed, but instead that it has the potential to do so. Counsel concluded by asserting that the Petitioner's professional history and experience uniquely qualify her to advance her proposed endeavor.

The Petitioner resubmitted her business plan in response to the RFE, and also submitted additional recommendation letters, articles, and reports in support of her eligibility for a waiver of the job offer.

In denying the petition, the Director determined that although the Petitioner's proposed endeavor has substantial merit, the record did not establish that the endeavor is of national importance. Specifically, the Director noted that the Petitioner did not establish that her proposed endeavor had implications beyond her self-owned company, its business partners, alliances, clients, or her workplace at a level sufficient to demonstrate national importance. The Director further determined that the Petitioner did not establish that her proposed endeavor would have a broader impact on the legal field, specifically noting that "benefits that are isolated to a single institution or locality in the United States might be so attenuated at the national level as to preclude a finding that the proposed endeavor has national importance."

On appeal, counsel for the Petitioner asserts that USCIS "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law to the detriment of the Appellant." The Petitioner also asserts, through counsel, that the Director disregarded the evidence submitted, and provides a brief that emphasizes her qualifications as an entrepreneur and asserts that the evidence of record establishes the national importance of the proposed endeavor.

For the reasons provided below, we agree with the Director that the Petitioner has not demonstrated the national importance of the proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is “more likely than not” or “probably” true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989).

In 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 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. Further, to evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of his work. 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.

The Petitioner contends that the Director did not duly consider certain pieces of evidence, such as her resume and experience, her company’s business plan, letters of recommendation, and industry articles and reports, and relies primarily upon the evidence and arguments previously submitted. While we acknowledge the Petitioner’s appellate claims, we nevertheless conclude that the documentation in the record does not sufficiently establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* analytical framework.²

The record includes evidence to support the Petitioner’s assertion that she has experience in the legal industry and as an entrepreneur in Brazil. Letters of support from former colleagues and business associates speak to her talents and accomplishments in her various business ventures. We note that the Petitioner’s experience is not relevant to the first part of the *Dhanasar* framework, but to the second - whether the Petitioner is well positioned to advance the proposed endeavor. Neither the letters nor any other evidence within the record provides insight into how the Petitioner’s endeavor to build a management consulting company in [redacted] Florida will positively impact the region or the industry beyond any clients to which her singular business will provide consultancy services.

The record contains an expert opinion letter from an adjunct professor of political science at [redacted] [redacted] University who concludes that the Petitioner’s proposed work has national importance. But the professor does not base his conclusion on the national importance of the Petitioner’s specific endeavor. Although he recites the Petitioner’s career history and accomplishments, and praises her “extensive knowledge of the legal and taxation landscape in Brazil,” his findings stem from the significance of entrepreneurship, particularly in relation to investments and tax planning for U.S. companies engaging in business with Brazil and other Latin American

² While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

companies. The letter therefore does not establish the national importance of the Petitioner's specific proposed U.S. work. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable").

The record also contains articles and industry reports discussing immigration, entrepreneurship, finance, and foreign investments. While the Petitioner previously asserted and now reiterates on appeal the significance of this material in establishing the national importance of her endeavor, we examine the endeavor itself to evaluate its broader impact. We further note that the Petitioner's counsel refers to these reports and articles throughout the record, asserting that the beneficial implications and national importance of the Petitioner's proposed endeavor as an entrepreneur are largely reported by institutions of distinguished reputation and major media. On appeal, counsel emphasizes the Petitioner's experience in the field and asserts that her proposed endeavor "motivates economic production and national development," and further claims that her work "will translate into profitable business and commercial tendencies, which have in turn contributed to the national economy and the domestic job market." Assertions of counsel, however, do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

The Petitioner's business plan emphasizes that her company will benefit U.S. companies doing business or planning to do business in Brazil because it will generate tax savings that can be reinvested in enterprise growth as well as maintenance and generation of employment. General assertions about her company's potential impact are not supported in the record by corroborating evidence of the plausibility of those assertions, and a lack of detail concerning her intentions makes it difficult to discern how the Petitioner's endeavor differs from that of other entrepreneurs in the field who operate independent consultancy firms in the United States. The Petitioner has not shown how her own business will impact the economy or the industry at a level commensurate with national importance. As noted by the Director, although the business plan and an independent letter from a potential investor reference potential investments into the company, the record does not include any documentation to substantiate these references. Moreover, as noted by the Director, the growth, revenue, and hiring projections provided in the business plan are not accompanied by an explanation of the sources used for those calculations. The Petitioner's unsupported statements are insufficient to meet her burden of proof. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The evidence of record does not demonstrate that the endeavor realistically has significant potential to employ U.S. workers or otherwise offer substantial positive economic benefits for the United States. Consequently, the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, and the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reason 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 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 alternative issues on appeal where an applicant is otherwise ineligible).

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.

ORDER: The appeal is dismissed.