



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

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

In Re: 32486628

Date: APR. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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. 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

¹ *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).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 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 stated that she intended “to assist U.S. organizations to design, develop, and implement the integral systems and procedures needed to protect American workers from illness and injury, protect the environment from damage and impacts, as well as avoid property damage.” She explained that she planned to continue “working as an Environmental Manager and offering my expertise to U.S.-based companies to help improve their management systems and/or operations. More specifically, I can provide my expertise in energy consumption, natural resources, waste disposal, and environmental management” In response to the Director’s request for evidence (RFE), the Petitioner indicated that her company, [REDACTED] “will act in the field of Environmental Health and Safety (EHS) Due Diligence, evaluating and mitigating potential environmental liabilities and health and safety risks The core services offered by [REDACTED] [REDACTED] encompass a comprehensive suite of EHS consultancy categories.”

In addition to company formation documents for [REDACTED] the Petitioner submitted its business plan.² This business plan includes industry and market analyses, information about her company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner’s education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner’s business plan anticipates that her company will hire 9 personnel in year one, 11 in year two, 10 in year three, 11 in year four, and 10 in year five (51 employees total), but she did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while her plan offers revenue projections of \$828,397 in year one, \$1,585,920 in year two, \$2,482,672 in year three, \$3,316,530 in year four, and \$4,294,237 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

² As the Petitioner’s formation of [REDACTED] (2023) materialized after the filing of the petition, and therefore would not establish her eligibility at the time of filing, it does not assist her in establishing that she meets the requirements set forth in the *Dhanasar* framework. The petition in this matter was filed on May 11, 2023, and the Petitioner has the burden of proof to establish eligibility for the requested benefit at the time of filing. See 8 C.F.R. § 103.2(b)(1), (12); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971) (providing that “Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts”). Further, 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).

The record includes information about compliance managers, environmental managers, the role of the environmental manager in advancing environmental sustainability, the value of environmental management, worker shortages in environmental management, and U.S. environmental policies. She also submitted articles discussing environmental challenges facing our nation, the state of the environment and natural resources in the United States, the economic benefits of immigrant entrepreneurs, immigrants as job creators, and the role immigrants play in the U.S. economy. We agree with the Petitioner that the submitted documentation establishes her endeavor has substantial merit. In determining national importance, however, the relevant question is not the overall importance of the industry in which the individual will work or the value of immigrant entrepreneurship; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of her specific proposed endeavor.

The Petitioner also provided letters of support from C-W-, G-D-C-M-, J-E-S-, C-E-O-, L-H-, J-H-, J-M-B-, T-F-, C-L-, E-S-, F-G-, S-E-M-, I-K-C-, P-V-F-, K-U-, and B-K- discussing her environmental management capabilities and experience. The Petitioner’s education, skills, knowledge, and prior work in her field, however, 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.

Furthermore, the Petitioner submitted an “Expert Opinion Letter” from Dr. A-A-, Adjunct Professor of Mathematics at [redacted] in support of her national interest waiver. Dr. A-A- contended that the Petitioner’s proposed work is of national importance because her generic occupation of environmental manager and the occupational health industry stand to contribute to our nation’s economy and U.S. public health and safety. The issue here, however, is not the national 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. The letter from Dr. A-A- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner’s specific proposed work offers broader implications in her industry, U.S. public health advancements, or substantial positive economic effects for our nation that rise to the level of national importance.

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 demonstrated that her undertaking “would substantially impact job creation and economic growth, either regionally or nationally.” In addition, the Director indicated that the Petitioner had not shown that her proposed work stands “to substantially affect economic activity or tax revenue in a state, region, or nationally.”

In her appeal brief, the Petitioner argues that there is an “impending shortage of environmental professionals” and that she “will be addressing an industry shortage, which U.S. workers cannot address as demand exceeds supply.” We are not persuaded by the argument that the Petitioner’s proposed endeavor has national importance due to the shortage of workers in her field. Here, the Petitioner has not established that her proposed endeavor stands to impact or significantly reduce the claimed

national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner further states that her proposed endeavor “aligns with pressing federal initiatives aimed at environmental protection and sustainability.” She claims that her proposed work “is essential to advancing U.S. leadership in environmental sustainability and compliance.” The Petitioner also contends that her undertaking “support[s] the broader goal of promoting sustainable business practices” and affects “local communities, the entire nation, and even global environmental standards.” In addition, she argues that her “endeavor supports the national interest by contributing to economic growth, public health, and environmental sustainability.”

The Petitioner, however, has not provided evidence demonstrating that her proposed endeavor would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of her proposed endeavor stands to offer broader implications in her industry or to generate substantial positive economic effects in the region where her company will operate or in other parts of the United States.

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.* 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 environmental management services to her company’s clients, she has not offered sufficient information and 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 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 company and its future clientele to impact her industry, the environmental management field, U.S. public health, our country’s economy, or U.S. societal welfare more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown 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. Specifically, she has not demonstrated that her company’s future staffing levels and business activity stand to provide substantial economic benefits in Florida or any other region of the United States. While the Petitioner claims that her company has growth potential, she has not presented evidence indicating that the benefits to the regional or national economy resulting from her undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

In addition, although the Petitioner asserts that her endeavor offers benefits for the domestic job market, she has not offered sufficient evidence that her endeavor offers Florida, any other parts of the United States, or our nation a substantial economic benefit through employment levels, tax revenue, or business activity.

For the aforementioned reasons, 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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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

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.