



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

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

In Re: 34941197

Date: DEC. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing entrepreneur, 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 record did not establish that the Petitioner merited a waiver of the job offer and labor certification requirements for EB-2 classification. The matter is now before us on appeal pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that 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 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).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.

Id.

II. ANALYSIS

The Petitioner seeks to come to the United States to continue her career in the advertising and marketing industry. She states that she has extensive knowledge and experience of the Brazilian advertising market that would be beneficial to U.S. organizations seeking to expand into Brazil. She states that her plan in the United States is to “enter U.S. companies” and “provide expert advice and guidance” regarding the Brazilian and Latin American markets. She argues that her proposed endeavor is nationally important because the marketing industry stimulates additional economic activity and contributes to increased job opportunities for American workers. In support of her proposed endeavor the Petitioner provided a professional plan, expert opinion letters, industry reports and articles regarding the advertising and marketing industry.

The Director issued a request for evidence (RFE) seeking additional documentation of her eligibility for a waiver of the job offer and labor certification requirements for EB-2 classification. The Petitioner provided a new business plan for her own start-up company, letters of intent from prospective clients, articles regarding American businesses working in Brazil and additional industry related reports and articles. She further provided evidence of her extensive experience and awards in the marketing industry in Brazil and evidence of her significant achievements in the field.

The Director determined that the Petitioner did not establish that she met any of the three prongs of the *Dhanasar* analytical framework. On appeal, the Petitioner argues that the Director did not appropriately weight the submitted evidence and erred as a matter of policy by using their own novel interpretation of the *Dhanasar* framework.

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. *Id.* at 889.

The Petitioner argues on appeal that her proposed endeavor has both substantial merit and national importance.² She further argues that the Director’s focus on the broader implications of her endeavor is against the spirit of the *Dhanasar* framework because it focuses too much on the national or regional implications of the Petitioner’s business. 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 id.* 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

² The Petitioner submitted supplemental documentation for her appeal in January 2024. Regulations preclude us from considering any evidence submitted outside of the appeal window. 8 C.F.R. 103.3(a)(2)(i)

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.

At the time of filing, the Petitioner’s specific endeavor was to continue working in the advertising and marketing field for a U.S. company. In response to the Director’s request for evidence, the Petitioner stated that she intends to create her own company to provide marketing services to various businesses. In the business plan provided in response to the RFE, the Petitioner stated she would invest \$1000 for start-up costs. She further stated that her business would price their product based on performance with a “success fee.” She stated that she intends to target small- to medium-sized companies in the U.S. that seek to enter the Brazilian market. The Petitioner included several letters from prospective future clients seeking to retain the services of her organization. However, the Petitioner’s business plan did not contain any revenue forecasts, staffing models, or financial forecasts to establish the actual economic impact of the proposed endeavor both within her own organization and in the economy more broadly.

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. Although the Petitioner’s statements reflect her intention to provide valuable advertising and marketing services for her future employers and 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. Additionally, the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond her proposed clientele to impact the advertising and marketing field or 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 the nation. While we acknowledge the submission of industry-related articles and government reports, neither the Petitioner nor her company were specifically mentioned in these articles. The articles analyze the importance of Brazil and United States trade relations and the overall health of the marketing and advertising industry. 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 U.S. regional or national economy resulting from the Petitioner’s advertising and marketing projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed endeavor 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.

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.