



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

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

In Re: 29140916

Date: FEB. 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, who works in business management, 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. 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 the Petitioner qualifies for the national interest waiver. 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 qualify for a national interest waiver, a petitioner must first show eligibility 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 EB-2 eligibility, 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 USCIS may, as 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 as a member of the professions holding the equivalent of an advanced degree as defined at 8 C.F.R. § 204.5(k)(2). The issue before us 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 Petitioner earned a bachelor's degree in business management in Brazil in 2009. The Petitioner worked at a large Brazilian bank from 2006 to 2019, first in budget management and financial planning; then in human resources and benefit management; and finally, from 2014 to 2019, in project management as a health and wellbeing analyst. In July 2019, the Petitioner arrived in the United States as an F-1 nonimmigrant student to study English as a second language. In February 2020, the Petitioner began working as a regional manager for a commercial cleaning service. She was still in the United States when she filed the petition in October 2020.

The Petitioner submitted a business plan for “a Virtual Social Startup Incubator,” described as “an all-purpose project that intends to offer consultancy to small entrepreneurs,” “especially those from more vulnerable social groups.” The business plan indicates that “[these] entrepreneurs will have access to specialized consultancy, courses, training, training [sic], and the advantages of operating in a network, with the exchange of experiences and information.”

The Director concluded that the Petitioner had established the substantial merit of the proposed endeavor, but had not met the other requirements described in *Dhanasar*. We agree with the Director's conclusions, as explained below.

A. Substantial Merit and National Importance

The first *Dhanasar* 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. *Matter of Dhanasar*, 26 I&N Dec. at 889. We look for broader implications. An 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 889-890.

The business plan indicates that the Petitioner's incubator would employ 50 part-time “consulting and mentoring professionals” and 12 full-time employees in other positions, and that the “virtual incubator will plan and execute ways of approaching the most socially vulnerable communities, and those most in need of this type of stimulus.” The business plan, however, does not provide further details about the expected wider impact of the incubator's planned activity.

The Petitioner submitted an expert opinion letter from an associate professor at [redacted] [redacted] who stated that the Petitioner “would work . . . in an area of substantial merit and national importance.” Under *Dhanasar*, however, the Petitioner must establish the national importance of her specific proposed endeavor, which is narrower than the overall area, field, or industry in which the Petitioner seeks employment. The letter did not mention the virtual incubator at the heart of the proposed endeavor. Instead, it indicated that the Petitioner intends to work “as a General and Operations Manager/Entrepreneur in the business administration sector,” and that she is qualified to help U.S. companies seeking to invest in Latin America.

The Director issued a request for evidence (RFE), stating that the Petitioner must establish the national importance of the specific proposed endeavor, rather than the overall importance of a particular subject, occupation, or field.

In response, the Petitioner stated that she “will establish her company in [redacted] Massachusetts, an SBA HUBZone area that will help to fuel small business growth in historically underutilized business zones.” The Petitioner cited no independent evidence to establish the relevance of HUBZone designation, or to support the claim that the Small Business Administration had in fact designated [redacted] as a HUBZone. Furthermore, the Petitioner’s own business plan states that because the company would be a virtual incubator that would operate primarily online, the company’s physical location is not particularly relevant to its overall impact.

The Petitioner also cited further background information regarding entrepreneurship, small businesses, and business development. Because of the general nature of these materials, they do not specifically address the Petitioner’s proposed endeavor.

The Director concluded that the Petitioner did not show that the benefit from her proposed endeavor would extend beyond the incubated companies to “impact the business industry or field more broadly.” The Director noted the Petitioner’s projected creation of 64 jobs, but found that the Petitioner had not supported this projection with independent, objective evidence. The Director stated:

The evidence in the record does not show how this endeavor would offer substantial economic benefits to the region where it operates or to the nation, as a whole; nor does it demonstrate how the endeavor would significantly impact employment levels regionally or nationally. Furthermore, the petitioner has not demonstrated that the specific work she proposes to undertake will offer original innovations that will contribute to the business field more broadly. When determining national importance, the relevant question is not the importance of the field that the petitioner will work in but the specific endeavor she proposes to undertake.

Overall, the petitioner has not offered sufficient evidence to demonstrate that her work stands to impact the regional or national populations at a level consistent with having national importance. Nor has the petitioner shown that her work would have broader implications for the field or industry, beyond the clients she would serve.

On appeal, the Petitioner asserts that her business plan “allows concrete projections of the benefits she may offer to the U.S.” The Petitioner does not identify any of these “concrete projections” on appeal.

The business plan in the record estimates the number of businesses the incubator may serve in its first five years of operation, but does not describe the broader impact of the proposed endeavor beyond general assertions about the value of fostering small businesses, especially among disadvantaged communities. The business plan projects nearly \$5.9 million in revenues during the first five years, but this figure concerns benefit to the incubator itself. The Petitioner does not explain or establish the broader significance of this figure to show its national importance, beyond the incubator's self-interest.

The activities of business incubator could have national importance, if there is evidence to show that its impact extends significantly beyond benefit to the incubator itself and its customers. But the burden is on the Petitioner to establish that impact, and the Petitioner cannot meet that burden with general information about entrepreneurship and unsupported assertions about the goals of the proposed endeavor. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See, generally, 6 USCIS Policy Manual F.5(D)(1)*, <https://www.uscis.gov/policy-manual>.

For the above reasons, we agree with the Director's conclusion that the Petitioner has not established the national importance of the proposed endeavor.

B. Well Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong shifts the focus from the proposed endeavor to the individual. To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Petitioner stated that she is "well positioned to advance her proposed endeavor based on her skills, knowledge, and record of success." As noted above, the Petitioner has submitted a business plan for the virtual incubator, and the Petitioner holds a degree and certificates relating to business management. But the record is deficient in other areas. The Petitioner does not claim any experience as an entrepreneur, or running a business incubator. Rather, she "spent the last 14 years working in different roles" at a bank, mostly in human resources. An official of that bank indicated that the Petitioner's responsibilities included "[f]inancial and budget analysis," "HR/strategic planning, health and wellbeing program development," and "[p]roject, product and resource management." Other certificates and letters relate to occupational health and safety. The Petitioner did not explain how this past experience gives her the necessary expertise to establish and manage a virtual incubator.

In the RFE, the Director noted that the Petitioner's documented experience does not appear to relate directly to key aspects of the proposed endeavor. The Director identified several types of documentary evidence that could establish the Petitioner's "education, skills, knowledge, and record of success in related or similar efforts." In response, the Petitioner submitted a certificate showing that she had completed an online program called "Liderança na Inovação" through the [REDACTED] in summer 2020. The Petitioner submitted no further information about this online course to establish its relevance to the proposed endeavor.

The Petitioner also submitted two letters dated July 2022, relating to employment that the Petitioner pursued from 2020 to 2022. Most of this employment took place after the Petitioner filed the petition in October 2020. Experience gained after the filing date cannot establish eligibility at the time of filing, as required by 8 C.F.R. § 103.2(b)(1).

Also, the experience described in those letters does not relate to the establishment and management of a business incubator. Rather, the letters describe the Petitioner's employment as a regional manager of a commercial cleaning company, where she managed the cleaning staff at a fitness center and at a hospital, and she tested and implemented "information systems used in customer relationship management marketing and management."

The Petitioner's initial submission did not include any evidence of progress toward achieving the proposed endeavor. The business plan describes the proposed endeavor but is not, itself, evidence of such progress. The business plan names the Petitioner's proposed company and cites an address for its intended website, but the Petitioner did not show that the company or its website existed at the time she filed the petition in October 2020.

The Director requested evidence of progress toward achieving the proposed endeavor. In response, the Petitioner submitted articles of organization showing that the Petitioner established a corporation in [redacted] 2022, more than two months after the Director issued the RFE in April 2022. This filing does not represent progress toward achieving the proposed endeavor at the time of filing. Also, the Petitioner did not document any business activity by the new corporation.

Also in the RFE, the Director noted that the Petitioner's business plan indicates that the company would rely on investors who would hold a 40 percent stake in the company. But the Petitioner did not identify any investors or show that the company had secured those investments. The Director requested documentary evidence of "interest from potential customers, investors, or other relevant individuals." The Petitioner's response to the RFE did not include evidence of this kind.

The Director denied the petition, concluding that the Petitioner had not established that she is well positioned to advance the proposed endeavor. The Director noted that the business plan relied on several claims and assumptions that the Petitioner had not corroborated with independent evidence.

On appeal, the Petitioner does not dispute "the lack of evidence demonstrating . . . interest from potential customers, investors, or other relevant entities," but states that she "has provided a comprehensive business plan that outlines a clear model and plan for future activities." Such a plan, however, is only one of several considerations contemplated in *Dhanasar*. The Petitioner has not shown that, at the time of filing, she had made significant progress toward realizing the proposed endeavor. The lack of such evidence is a substantial factor supporting denial of the petition.

The Petitioner states that she has an "exceptional track record and work experience" and a "diverse skill set" with "transferable skills." But the Petitioner has not shown the direct relevance of her education and experience to the proposed endeavor.

The Petitioner also cites her earlier submission of an expert opinion letter, but, as shown above, that letter does not describe the proposed endeavor in any detail, instead discussing the Petitioner's management experience in more general terms.

Because the Petitioner has no evident experience establishing or running a business incubator, and the record does not show that the Petitioner took any concrete steps toward implementing the business plan before filing the petition, we agree with the Director that the Petitioner has not shown that she is well positioned to advance the proposed endeavor.

In light of the above conclusions, the Petitioner has not met her burden of proof to show the national importance of the proposed endeavor and that she is well positioned to advance the proposed endeavor. Detailed discussion of the remaining prong of the *Dhanasar* national interest framework cannot change the outcome of this appeal. Therefore, we reserve argument on the third prong.²

III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor, and has not shown that she is well positioned to advance the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.

² See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).