



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 29405363

Date: JAN. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an accountant, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, 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 the record did not establish the Petitioner is well positioned to carry out her endeavor or that it would be in the United States' interest to waive the requirement of a labor certification. 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 discretion¹, 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 did not analyze whether the Petitioner established eligibility for the EB-2 classification as either an advanced degree professional or an individual of exceptional ability. Upon de novo review, we conclude the Petitioner has established that she holds the foreign equivalent of a U.S. bachelor's degree and at least five years of progressive post-baccalaureate experience in the specialty. Therefore, she established her eligibility as an advanced degree professional. The remaining issue is whether the Petitioner established eligibility for a national interest waiver under the Dhanasar framework. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor 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. Dhanasar, 26 I&N Dec. at 889. The Director determined the Petitioner established eligibility under this prong but provided no analysis to support this determination. Upon de novo review, we withdraw the Director's finding in this regard and conclude the Petitioner has not established eligibility under prong one of the Dhanasar framework.

We reviewed the Petitioner's plan, recommendation letters, certificates, work experience letters, and résumé, among other documents. The Petitioner proposes to work as an accountant, which includes duties related to financial reconciliation; commercial budget, inventory, and audit support; and financial planning, controllership, and compliance with tax and accounting obligations. Although the Petitioner stated that she will not work for a single employer and will have the liberty to contract with more than one institution, she has not explained how this will occur. The Petitioner has not specified how she will carry out the claimed proposed endeavor accounting duties. Although the Petitioner is not required to have a job offer to establish eligibility for a national interest waiver, in Dhanasar, we held that a petitioner still must identify "the specific endeavor that the foreign national proposes to undertake." Id. at 889. Here, the Petitioner leaves the proposed endeavor open to interpretation. For instance, we cannot determine whether the Petitioner plans to open her own accounting firm, work as an independent contractor under the aegis of an established accounting firm, or in some other capacity. To further illustrate, the Petitioner stated that her knowledge of U.S. tax regulations will assist individuals and businesses in cross-border transactions, but she has not sufficiently explained how cross-border transactions fit within her accounting services. Furthermore, the Petitioner's description of her proposed endeavor involves duties related to bookkeeping and auditing, which raises questions as to how she will divide her time between the various facets of her endeavor. Specificity is material, as the duties she performs and how she will perform them inform the level of impact her endeavor will have.

Regarding the national importance of the proposed endeavor, the Petitioner emphasized the importance and economic worth of the accounting industry. In determining national importance, the relevant question is not the 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. While we agree that accounting is important to the U.S. economy, the Petitioner’s reliance on it to establish the national importance of her proposed endeavor emphasizes the industry, rather than her specific proposed endeavor.

The Petitioner mentioned the economic cost of accounting errors and used the example of Uber to demonstrate how accounting errors can cost millions of dollars. Here, the Petitioner attempts to demonstrate a positive impact rising to the level of national importance by presenting the important downsides of not performing a job correctly. However, preventing a negative effect is not necessarily sufficient to establish an affirmative positive impact that rises to the level of national importance.

The Petitioner cautioned us not to assume that the financial health of businesses is a private matter only. We acknowledge the Petitioner’s contention that her services will make other business run more efficiently and effectively, which will allow them to invest in other areas, thereby creating positive economic results overall. We also acknowledge that any basic economic activity has the potential to positively impact the economy. The Petitioner, however, does not offer a sufficient evidentiary basis to conclude that the “ripple effects” of her specific proposed endeavor will rise to the level of national importance. In other words, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s proposed endeavor would reach the level of “substantial positive economic effects” contemplated by Dhanasar. See *id.* at 890.

The Petitioner submitted an opinion letter from [REDACTED], a professor in accounting at [REDACTED]. [REDACTED] provides background information on what accounting is and why it is important, but he does not appear to possess detailed knowledge of the Petitioner’s proposed endeavor. Although he mentions the Petitioner’s “unique strategies,” he does not explain what these strategies are or how they differ from existing, mainstream strategies. [REDACTED] letter contains an explanation of the VITA program, the funding of which comes from the Internal Revenue Service and private sector partners. Based upon this [REDACTED] concluded that the proposed endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives. Indeed, filing taxes is a nationally important concept and a government-sponsored program, like VITA, which helps individuals file taxes, supports this conclusion. However, the Petitioner has not clearly explained what level of involvement her proposed endeavor has with VITA or how her specific work will impact the VITA program or the government’s tax collection initiatives overall. Therefore, we do not find support in the record for [REDACTED] conclusions.

Similarly, the Petitioner’s recommendation letters do not support a finding of the Petitioner’s eligibility under the first Dhanasar prong. The authors discussed the results she achieved for her employers and clients, how the Petitioner performed well on various projects in the past, and the success she brought to certain initiatives. However, the authors do not sufficiently explain how the Petitioner’s performance or the results she achieved extended beyond her employer and the specific parties involved to impact the field more broadly. For instance, one author mentioned how the Petitioner produced a time and cost reduction for the company, but the author does not support this assertion with corroborative details or explain how this benefit extended beyond the company.

Although the author mentions an “innovative pricing methodology,” he provides little explanation of what the methodology is, how it functions, how it is different from typical methods, or how the methodology is attributable to the Petitioner. Even if he had, the author does not explain how this methodology would be relevant to the overall accounting industry or how others would be aware of it. Accordingly, we conclude the implications of her past work appear limited to her employer and clients.

In response to the Director’s request for evidence (RFE), the Petitioner provided new recommendation letters, including one in which the author asserted that the Petitioner has influenced others in the field, such as her colleagues. However, the author offers few details or examples of what effect she had on her colleagues or how this effect had broader implications. Likewise, the author’s suggestion that the Petitioner has innovative techniques and methods is not explained, nor does he explain how these techniques and methods affected the accounting field. While we have only discussed a couple of recommendation letters, these examples are indicative of the whole. We conclude these letters offer little support for a finding that the proposed endeavor has national importance.

For the foregoing reasons, the Petitioner has not established that her proposed endeavor has national importance.

B. Well Positioned to Advance the Proposed Endeavor

The Director determined the Petitioner did not establish eligibility under prong two of the Dhanasar framework. The second prong focuses on the individual and whether they are well positioned to advance the proposed endeavor. In analyzing this, 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. *Id.* at 890.

The Director acknowledged the Petitioner’s education and recommendation letters, among other pieces of evidence. Nevertheless, the Director concluded the Petitioner had not sufficiently demonstrated she has a record of success or progress in related or similar efforts; has made progress towards achieving the proposed endeavor; that there is interest from potential customers or other relevant entities or individuals; or that she is otherwise well positioned to advance her work. Further, the Director stated the Petitioner “has not provided any contracts, agreements, or other documentary evidence” . . . of any progress in reaching the goals of her proposed endeavor.” We agree. Returning to the Petitioner’s articulation of her proposed endeavor, we again confront the lack of specificity in how she will carry out her endeavor. It is unknown how she plans to provide her accounting services or even which types of clients and businesses she plans to target. As the Petitioner’s plans are vague and open-ended, we agree with the Director that the record does not reflect a sufficiently detailed model or plan for future activities.

The Petitioner provided various certificates indicating her familiarity and training in accounting practices in Brazil; however, she explained little about how she earned them. For example, attending “accounting day,” is not self-explanatory and offers little indication of how this might position her well to carry out her endeavor. Moreover, she offers little evidence of her knowledge, skills, and training in U.S. accounting methods and regulations. The Petitioner acknowledged that the United States’ method of accounting differs from that of many other countries. Further, [redacted] wrote

that the United States “has one of the most complex Indirect Tax Systems in the world.” It is unclear how the Petitioner will carry out her proposed endeavor services, such as “the determination of federal, state, and municipal taxes and accessory statements, for submission to the Internal Revenue Service,” without a demonstrated understanding of U.S.-specific tax matters.

Furthermore, the record does not reflect that she has a license or certification to practice accounting in the United States, as opposed to in her home country. The Petitioner recently earned a training certificate in bookkeeping, which may indicate some level of familiarity with U.S. practices. However, the Petitioner did not explain how she earned this certificate or how it enables her to perform accounting services. The Petitioner submitted a certificate suggesting that she has some familiarity with individual tax preparation. While this may be true, the Petitioner has not demonstrated the depth of her familiarity with this topic, how she earned the certificate, or how this enables her to perform accounting services in the United States. Moreover, this certificate’s date indicates she earned it after the filing date of the petition, and therefore it cannot serve as evidence of progress towards the endeavor at the time of filing.

As the above analysis demonstrates, we conclude the Petitioner has not established she is well positioned to advance her endeavor. On appeal, the Petitioner relies upon the evidence she previously submitted. Our above analysis addresses many of the Petitioner’s assertions on appeal. As the identified reasons for dismissal are dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve remaining arguments. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that “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

The documentation in the record does not establish a specific proposed endeavor, nor does it establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Furthermore, the record does not establish that the Petitioner is well positioned to advance her endeavor. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of eligibility under the third prong outlined in *Dhanasar* would serve no meaningful purpose.

As the Petitioner has not met the requisite first and second prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.