



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

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

In Re: 29401395

Date: JAN. 11, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an architectural designer and manager, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.<sup>1</sup> 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

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

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<sup>1</sup> Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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,<sup>2</sup> grant a national interest waiver if the petitioner demonstrates that:

- 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 was a member of the professions holding an advanced degree.<sup>3</sup> The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner states that she is an architectural designer and manager with more than seven years of experience creating interior design of apartments and managing architecture projects in development companies. She states that she intends to continue her professional development in the United States through real estate development and architectural design and plans to “organize [her] own small development company that will build high-quality and affordable housing.”

With the initial filing the Petitioner submitted evidence of her education and experience, a personal statement describing her qualifications and the field of architecture, documentation of her design work, and recommendation and support letters. She also submitted industry reports and articles discussing the field of architectural design and management, shortages and demand in the field, and the benefits of immigration on labor shortages in the United States.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish her eligibility for the national interest waiver. The Director specifically noted that the Petitioner’s initial evidence did not include a detailed description of her proposed undertaking or venture. The Petitioner’s response to the RFE includes a business plan for her company, [REDACTED], established in February 2023. She states that, through her company, she will work to meet housing demand, boost local economies, and enhance living standards. She describes her proposed endeavor as follows:

1. Improving the quality of the product of the residential, multifamily, and mixed-use projects, which contributes to the maximum efficiency of the project and meets future residents’ and clients’ expectations.
2. Creating added value for real estate projects through design services and 3D visualizations.

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<sup>2</sup> 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).

<sup>3</sup> The record demonstrates that the Petitioner holds the equivalent of a U.S. professional degree in architecture awarded in 2015. See 8 C.F.R. § 204.5(k)(3)(i)(A).

3. Creating effective marketing packages for real estate projects by providing design services: 3D visualization of the building's exterior and interiors, landscape design, floor layouts, and 3D video projects.

The Petitioner's business plan anticipates that the company will employ two part-time employees in its first year. Regarding financial predictions, the Petitioner's business plan predicts total revenue of \$150,000 in its first year, with a projected profit of \$73,000.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has substantial merit. However, he concluded that the Petitioner had not demonstrated that her proposed endeavor had national importance, that she was well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Director noted that the articles and industry reports in the record were generic in nature and did not support the Petitioner's claims of the national importance of her proposed endeavor. The Director further stated that the record did not demonstrate that the Petitioner's business will have a regional or national impact at a level consistent with having national importance, or that the Petitioner's work will have broader implications in her field of endeavor. The Director also noted that the record did not include plans for financial support for her proposed endeavor, or letters of interest in working with the Petitioner's company to further her proposed endeavor. Additionally, the Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of her prospective contributions to the United States, an urgent national interest in her contributions, the potential creation of jobs, or that her self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief and asserts that the Director "failed to give due weight" to the evidence in the record and did not address her "degree and expertise in a STEM [Science, Technology, Engineering, Mathematics] field." In her brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates that she merits a national interest waiver.

#### A. Substantial Merit and National Importance

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.<sup>4</sup> In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of 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

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<sup>4</sup> The Petitioner erroneously states on appeal that the Acting Director concluded that the Petitioner's proposed endeavor "is not of substantial merit." However, the Acting Director stated in the decision, "You submitted sufficient evidence to demonstrate that your proposed endeavor has substantial merit." We agree that the Petitioner's proposed endeavor has substantial merit.

positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

When 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 Matter of Dhanasar*, 26 I&N Dec. at 889. Much of the Petitioner’s evidence relates to the field of architecture generally, rather than her specific proposed endeavor. Although we agree that STEM is important to maintaining the national innovation base contributing to the U.S. economy and may be the subject of national initiatives, we conclude that this does not necessarily establish the national importance of the Petitioner’s specific proposed endeavor. As noted above, the Director determined the endeavor has substantial merit, and we agree. However, the question we are examining here is national importance.

Although the Petitioner submits articles and industry reports describing the field of architectural design and management, these reports are not specific to the Petitioner’s proposed endeavor.<sup>5</sup> One article, from job search website Indeed, titled “How to Become an Architectural and Engineering Manager: 4 Steps,” describes the field generally, including required education and experience, but does not support the Petitioner’s claims of the national importance of her proposed endeavor. A printout of a blog directed to building materials companies discusses a shortage of architects and suggests that building materials companies improve their marketing to architectural specialists. Although this blog tends to support that there is a market for the Petitioner’s services, it does not support that her proposed endeavor has national importance. An additional article discusses the benefits of increased immigration in addressing labor shortages in the United States but is not specific to the Petitioner’s field or her proposed endeavor. Much of the Petitioner’s evidence relates to the field of architecture generally, rather than her specific proposed endeavor. Even considering the articles, reports, and statistics collectively and in the totality of circumstances, we still conclude that they do not support a finding that her specific proposed endeavor has national importance.

The Petitioner also submits her business plan dated 2023 to support the national importance of her proposed endeavor.<sup>6</sup> As noted, to establish national importance, the Petitioner must demonstrate the proposed endeavor’s impact. 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.* at 889. Although the Petitioner states that her proposed endeavor will contribute to economic growth, she has not supported these assertions with sufficient independent, objective evidence. The Petitioner does not explain how her company’s revenue (\$150,00) and job creation (two part-time employees) as stated in the business plan support her claim of “wide-ranging economic, social, and cultural benefits” on a national level. The evidence does not suggest that the Petitioner’s skills differ from or improve upon those already available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner’s experience will reach beyond benefitting her own company and clients or have broader implications within the field of architectural design and management. The record does not establish that her proposed endeavor stands to impact the field as a whole.

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<sup>5</sup> While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

<sup>6</sup> We note that the Petitioner’s business was established in February 2023, five months after the filing of this petition. However, a petitioner must establish eligibility at the time of filing, as required by 8 C.F.R. § 103.2(b)(12). *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971).

On appeal, the Petitioner relies upon the evidence she previously submitted and asserts that the Director did not fully consider all of the evidence in the record. We acknowledge the Petitioner's appellate claims that the Director did not duly consider certain pieces of evidence, specifically, her personal statement and business plan. We note that the decision discusses each of the claimed pieces of evidence the Petitioner's lists in her brief. Nevertheless, we address them again herein. The Petitioner continues to rely upon the asserted merits of the services she will provide, her personal and professional qualities and achievements, and the trends in architecture and design. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs.<sup>7</sup> See *INS v. Bagamasbad*, 429 U.S. at 25.

### III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in 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.

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<sup>7</sup> Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, that she was well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response and does not provide any new evidence. The Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner met the three *Dhanasar* factors and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that she meets all of the three *Dhanasar* prongs.