



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

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

In Re: 29337719

Date: JAN. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of financial management, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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 record did not establish that the Petitioner's proposed endeavor was of national importance and that, on balance, the record did not establish it was in the U.S. interest to waive the job offer requirement¹. 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 United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

¹ The Director found that the Petitioner qualified for EB-2 classification as an advanced degree professional, that the proposed endeavor had substantial merit, and that she was well positioned to advance the proposed endeavor.

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 discretion², 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

A. EB-2 Classification

The Petitioner submitted documentation in support of her claim that she qualifies for the EB-2 classification as a professional with an advanced degree. The Petitioner initially submitted her diploma, transcripts, letters documenting full-time experience, and an evaluation of education and work experience. The Director then issued a request for evidence (RFE) and stated that the letters documenting her experience did not include her roles and responsibilities and therefore did not establish five years of progressive experience. The Petitioner responded to the RFE and submitted further evidence of employment. The Director then stated she met the EB-2 classification as an advanced degree professional as she had the foreign equivalent to a bachelor’s degree and five years of progressive experience.

As stated above, a U.S. bachelor’s degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master’s degree and would therefore qualify as an advanced degree for the underlying EB-2 classification. 8 C.F.R. § 204.5(k)(2). The record shows that the Petitioner has a *bacharela em ciências contábeis* from [REDACTED] in Brazil. These educational documents are accompanied by transcripts and an evaluation of education and work experience. We conclude by a preponderance of the evidence the record shows that the Petitioner has earned the equivalent of a U.S. bachelor of science in accounting.

However, the record does not show that this degree was followed by five years of progressive experience and therefore, the Petitioner does not meet the EB-2 classification as a professional with an advanced degree. The Petitioner received her bachelor’s degree on March 14, 2018, and filed her petition on September 7, 2022; therefore, she could not have met the five years of progressive experience required. This is confirmed by the evaluation of education and work experience in the record, which states, “[i]t is my expert opinion that [the Petitioner], with a Bachelor’s Degree in Accounting Sciences and *4 years of experience* (emphasis added), has the equivalent of a U.S. Bachelor of Science in Accounting.” The letter goes on to further assess the “[i]ndividual’s *4 years of qualifying professional experience*” (emphasis added). We note that the Petitioner has many more years of experience in the financial field. However, at the time of filing, she did not have five years

² 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).

of experience after earning her bachelor's degree; and therefore, does not meet the requirements for an advanced degree professional. A petitioner must establish eligibility for the benefit at the time the petition is filed. 8 C.F.R. § 103.2(b)(1).

As the record does not establish by a preponderance of the evidence that the Petitioner is eligible for a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification including whether she qualifies as an individual of exceptional ability. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

B. National Interest Waiver

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. *Dhanasar* at 889.

1. Substantial Merit

The Petitioner proposes to create and operate a financial management company that will provide financial management consulting, financial advisory services, and finance training for small and medium-sized businesses in all regions of Florida. She provides statistics to show that there is a demand for the profession of financial management in the United States. She discusses the importance of small businesses to the U.S. economy, and the Biden Administration's priorities for the Small Business Administration in expanding counseling and training resources. She discusses the importance of experienced financial advisors during and after recessions for economic recovery. We conclude that the record shows the Petitioner's proposed endeavor has substantial merit.

2. National Importance

The Petitioner's first assertion as to why her proposed endeavor is of national importance, is that the Biden Administration has made the Small Business Administration as one of its budgeting priorities for 2024, and more specifically, in expanding counseling and training resources for small businesses. The Petitioner states that her proposed endeavor falls within this priority as her intent is to support small businesses through financial counseling and training.

However, 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 specific endeavor that the foreign national proposes to undertake.” *Id.* Although this shows that her proposed endeavor in supporting small businesses has merit, it does not further the claim of its national importance. This shows the Administration's focus on the small business industry, but not the national importance of her proposed endeavor.

The Petitioner states that there is a demand for the profession. She includes information showing an estimate of 71,300 vacancies in the field of financial management expected between 2021 to 2031, and that this is greater than the projection for the national average. In addition, the Petitioner shows that there is a projected growth of 23% in the field specifically in the state of Florida during the period 2018 to 2028. As stated above, in determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar* at 889. Although this shows prospective growth in the field, this does not show the proposed endeavor's prospective impact. Here, the record does not establish that her proposed endeavor stands to significantly impact the projected demand of the field as required by *Dhanasar*.

The Petitioner next discusses the economic impact she believes her proposed endeavor will have. She states that, although her business will not be located in an economically depressed area, her business will benefit economically depressed areas in Florida. The business plan states the location of her company does not prevent her from serving other areas, since her work, “[w]ill be carried out through visits to the business establishments providing financial management consulting, advisory services and financial training for professionals who wish to specialize in the area.” *Dhanasar* held that national importance can be shown if a proposed endeavor has “significant potential to employ U.S. workers” or “other substantial positive economic effects, particularly in an economically depressed area.” *Id* at 890. It is unclear from the Petitioner's brief or the business plan how the proposed endeavor will produce substantial positive economic effects in these economically depressed areas in Florida. Although she may be operating her business in Florida, and her business may eventually serve economically depressed areas, the record does not show the broader implications to the field of financial management, or substantial positive economic effects to the region the Petitioner will be serving.

Another potential economic impact the Petitioner presents is that her proposed endeavor will create direct and indirect jobs. She intends to employ eight direct employees in the first five years and following a formula for employment multipliers in the management, scientific, and technical consulting services industry, she projects her company will indirectly create even more jobs. Although the Petitioner states that her endeavor will be in this industry, the record does not explain how her specific proposed endeavor will create these jobs. For example, the business plan does not identify the types of jobs that will be created by the Petitioner's proposed endeavor, the location of these jobs, the wages of these workers or other details to establish the proposed endeavor could have “significant potential to employ U.S. workers or other substantial positive economic effects” as *Dhanasar* requires. *Id.*

In addition, the Petitioner states her knowledge of the Brazilian financial sector would be beneficial as she can provide an impact abroad, offering alternatives for investing corporate profit in Brazil. The expert opinion letter in the record explains that, “financial services and products help facilitate and finance the export of U.S. manufactured goods and agricultural products.” The letter further says that the United States is Brazil's second largest export market whose primary products are, “[c]rude oil, aircraft, iron and steel, and machinery.” It is unclear how the Petitioner's financial consulting company which will be targeting small and medium size businesses will be engaging in the Brazilian market and if so, how this offers substantial positive economic effects for the United States.

Finally, the Petitioner contends that her proposed endeavor will increase the well-being of society but does so with general statements and does not discuss specific plans or impacts that her proposed endeavor will have. The Petitioner states, “[t]he creation of the Financial Management Office should raise the standard of living for all, creating jobs and making products safer, cheaper and more functional.” Similarly, the expert opinion letter says, “entrepreneurs improve the lives of individuals and communities as well as the overall economy. They have been instrumental in spurring social change and improving the way people live and work. They help raise the standard of living for everyone by creating jobs and making products safer, less expensive, and more functional.” Both these arguments speak of entrepreneurship as an industry and not the Petitioner’s specific endeavor. Although the Petitioner’s statements reflect her intention to provide valuable services for her potential clients, she has not provided 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 record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond the businesses she proposes to serve to impact the industry more broadly at a level commensurate with national importance.

The record also contains letters of support from the Petitioner’s various employers, professors, and colleagues, attesting to her extensive experience in the field as well as her knowledge and professionalism. This evidence does not further demonstrate her proposed endeavor’s national importance and is more relevant to a second prong analysis regarding whether she is well-positioned to advance the proposed endeavor. Therefore, we will not address it in our national importance analysis. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety.

As the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.