



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

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

In Re: 29326464

Date: JAN. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and business manager, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts or business. *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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she had not established that a waiver of the required job offer, 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. Section 203(b)(2)(B)(i) of the Act. 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.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration

Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Petitioner proposes to operate a business specializing in nationwide long-distance freight hauling and transportation services for various goods in Florida. The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner asserts that she aims to further her career in the United States as an entrepreneur/business manager, making significant contributions to the transport industry specifically,

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).

and to business and entrepreneurship generally. She also expresses her desire to highlight the significance of the transport/trucking and car rental industries in the United States.

The Director issued a request for evidence (RFE) requesting, among other things, further evidence of how the proposed endeavor would be of national importance. In response, the Petitioner provided additional documents including a business plan that furnished extra details regarding the proposed endeavor. The Director found that the record did not establish that the Petitioner's endeavor had either substantial merit or national importance. In the decision denying the petition, the Director also concluded that the Petitioner had not demonstrated that on balance that it would be beneficial to the United States to waive the requirement of a job offer and thus of a labor certification.²

On appeal, the Petitioner argues that the Director erroneously denied the petition and failed to give due regard to her business plan and other documents. For example, the Petitioner contends that the Director imposed a "novel substantive and evidentiary requirements" exceeding those set forth in the regulations. The Petitioner also highlights the evidence submitted in support of the petition and in response to the Director's request for evidence (RFE) to underscore the sufficiency of the submitted evidence.

We reviewed the entirety of the record and have considered the Petitioner's eligibility for the national waiver. The Petitioner asserts that her proposed endeavor will address the current shortage of long-distance freight hauling and transportation services in the United States by fulfilling the country's growing demand for transportation. The Petitioner further professes that her company will hire two employees in the first year of operation, add six more through business expansion, and recruit an additional 22 by the end of its tenth year. She would ultimately acquire more commercial trucks and expand into additional states.³ The Petitioner states in her statement that it is clearly in the national interest of the United States to grant her a national interest waiver given her "impressive record of achievements as an entrepreneur/chief executive officer in Brazil."

The Petitioner also provided an expert opinion letter from Dr. V-L,⁴ an associate professor of marketing at [REDACTED]. Dr. V-L- contends that the Petitioner's work holds national importance, discusses the importance of entrepreneurship both generally and in the freight trucking industry, and states his belief that the proposed endeavor has significant potential to employ U.S. workers, create substantial positive economic effects, and address a matter the government describes as having national importance.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. 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. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have

² The Petitioner notes that the Director did not address the *Dhanasar* framework's second prong: whether the Petitioner is well positioned to advance the proposed endeavor. Though the Petitioner is correct, we find the error to have been a harmless one because, as will be discussed, the Petitioner did not satisfy the first prong, thereby rendering the I-140 petition unapprovable. We therefore decline to reach and thus reserve her appellate arguments concerning the second prong.

³ The business plan lacks financial forecasts or similar types of projections.

⁴ Name withheld to protect individual's identity.

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

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of the Petitioner’s work. While the Petitioner’s statements reflect her intention to operate a company that prioritizes providing high-quality transportation services to customers across the nation including trucks, trailers, and vans, the Petitioner has not offered 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, the record does not establish that the Petitioner’s proposed endeavor’s impact will be nationally important.

Though we acknowledge the Petitioner’s assertions and the evidence she submitted on appeal, we conclude that the Petitioner has not shown her proposed endeavor stands to sufficiently extend beyond her employees and her company’s customers to enhance societal welfare on a broader scale indicative of national importance.

The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that her specific endeavor has national importance under *Dhanasar*’s first prong. The Petitioner has not shown 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 United States. For example, the Petitioner has not demonstrated that her company’s future staffing levels and business activity stand to provide substantial economic benefits in Florida—the state where she would begin—let alone the United States as a whole. While the Petitioner claims that her company plans to hire 30 employees by the end of its tenth year, she has not presented evidence indicating that the benefits to the regional or national economy resulting from her undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. And while Dr. V-L- states that the Petitioner’s proposed endeavor stands to create employment opportunities for U.S. workers, the Petitioner has not, for example, offered sufficient evidence that the area in which her company operates is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, tax revenue, or business activity.

The Petitioner claims there is an ongoing demand for transportation professionals in the United States. We do not disagree. But though she states her intent to bring development and innovation to the transportation and logistics industry, the evidence she provides does not sufficiently support such a conclusion. While her endeavor may directly impact her employees and prospective clients, the evidence does not suggest how these benefits would reach the transportation and logistics industry overall or have an impact so broad as to affect the economy or create a significant number of jobs.

As previously mentioned, 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.” *Id.* at 889. The Petitioner has

not sufficiently explained how helping the individual companies and clients that would hire her would result in an impact on a broad scale rising to the level of national importance. For instance, the Petitioner has not provided evidence how increasing the profitability and enabling the expansion of a particular company would affect the GDP. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

We also acknowledge the documentation regarding the Petitioner's experience and qualifications and the recommendation letters commending her experience in running a transportation business. However, these relate to the second *Dhanasar* prong, which is concerned with the Petitioner's ability to advance her endeavor. They do not establish what impact her endeavor will have.

For the aforementioned reasons, the Petitioner's proposed work 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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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

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. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.