



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

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

In Re: 31284756

Date: JULY 5, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources specialist, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree 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 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 pursuant to 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<sup>1</sup>, grant a national interest waiver of the job offer, and

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<sup>1</sup> *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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 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 work in the United States as a human resources specialist through her company, [REDACTED]. 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.

In the decision denying the petition, the Director acknowledged that the Petitioner's proposed endeavor has substantial merit and that she is well-positioned to advance the proposed endeavor. The Director, however, concluded that the Petitioner had not demonstrated her proposed endeavor's national importance, and 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.

On appeal, the Petitioner argues that the Director's decision lacked sufficient detail and substantial discussion of the submitted evidence. She further contends the Director's decision did not give "due weight" to the evidence which emphasized the national importance of the Petitioner's proposed endeavor. The Petitioner requests that we conduct a "meticulous review" of her appeal. While we do not discuss every piece of evidence individually, we have reviewed the entirety of the record and have considered the Petitioner's eligibility for the national waiver.

As previously noted, the first prong, substantial merit and national importance, focuses on the specific endeavor 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 record shows that the Petitioner's proposed endeavor is to offer consulting services to small and medium-sized U.S. companies to create and sustain better work environments. The Petitioner also seeks to create safe and empowering work environments, enabling organizations to resume operations after the COVID-19 pandemic while adhering to strict health standards and the Occupational Safety and Health Administration's guidelines.

The record includes an opinion letter, recommendation letters, and letters expressing interest in obtaining the Petitioner's consulting services, as well as industry reports and articles related to the field of business and occupational well-being. The opinion letter's author extensively discusses the Petitioner's educational background and professional experience. The author states, the Petitioner's proposed endeavor "encompasses an initiative that has national importance and is a subject of national interest." The author also maintains that the Petitioner's proposed endeavor will boost the economy by creating safe and health-focused work environments, easing the government's responsibilities, and reducing government spending on economic and educational issues.

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 claims her proposed endeavor is of national importance, 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 include adequate corroborating evidence, to show that the Petitioner's specific proposed endeavor offers broader implications in her field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance.

The Petitioner argues that her proposed endeavor will stimulate productivity, increase employee satisfaction, and drive economic growth. Though we acknowledge the Petitioner's assertions and the submitted evidence, we conclude that the Petitioner has not shown her proposed endeavor's benefits stand to sufficiently extend beyond her clients and the companies she elects to work with 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. Specifically, the Petitioner has not demonstrated that her specific endeavor stands to provide substantial economic benefits in the United States. While the Petitioner claims that her endeavor will increase employee well-being and productivity, leading to economic growth, the record does not support the Petitioner's general assertions with corroborating evidence demonstrating the plausibility of those assertions. The Petitioner has not established her endeavor will have broader implications as contemplated by *Dhanasar*. *Id.* at 890.

Moreover, the Petitioner has not demonstrated that her undertaking has implications beyond the companies and individuals she elects to work with to impact the U.S. economy on a broad scale rising to the level of national importance. Nor has the Petitioner shown that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the country. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not indicate that the benefits to the regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner argues that her proposed endeavor is of national importance because it impacts a matter that a government entity has described as having national importance or is the subject of national initiatives. The Petitioner further contends that her proposed endeavor plays a "prominent role in the socio-economic landscape" through the creation of safe and health-conscious work environments. 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. Here, the Petitioner has not sufficiently explained how she will positively impact the U.S. economy and create direct and indirect jobs to move the U.S. economy on a broad scale rising to the level of national importance. Without evidence projecting U.S. economic impact or job creation attributable to the Petitioner's proposed endeavor, it is insufficient to assert that the benefits to the U.S. regional or national economy resulting from the proposed endeavor would rise to the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner also highlights her academic background and work experience in the human resources field to emphasize her proposed endeavor's national importance. Although an individual's experience, qualifications, contributions, and achievements are material, they are misplaced in the context of the first *Dhanasar* prong. The Petitioner's educational background and professional experience are material to *Dhanasar*'s second prong—whether an individual is well positioned to advance a proposed endeavor—but they are immaterial to the first *Dhanasar* prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91.

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, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.