



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

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

In Re: 29045461

Date: MAR. 07, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner merited a national interest waiver as a matter of discretion. 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.

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).

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 discretion¹, 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 Petitioner is an entrepreneur who owned and managed small businesses with her husband in Brazil, including an eyewear store. She proposes to operate a company domiciled in the United States, [REDACTED] which will sell prescription and nonprescription eyewear, initially only through a website.² The Petitioner states that the company's products would be sold at independent accessory shops and national chains "in the future."

The Director concluded that the Petitioner established her eligibility for the EB-2 immigrant classification as a member of the professions holding an advanced degree. So the sole issue on appeal is whether she merits a national interest waiver as a matter of discretion. Per the analysis below, we conclude that she does not.

The first prong of the *Dhanasar* analytical framework, concerning the substantial merit and national importance of the proposed endeavor, 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*, 26 I&N Dec. at 889.

The Director determined that the Petitioner's proposed endeavor is of substantial merit, but did not provide an analysis explaining this conclusion. Included in the record are articles from several websites concerning the economic impact of small businesses and online retail, as well as the eyewear industry and trends. We conclude that this evidence is sufficient to establish the substantial merit of the Petitioner's proposed endeavor in the field of entrepreneurialism.

When considering the second part of the *Dhanasar* framework's first prong, the national importance of the proposed endeavor, the Director noted that the Petitioner focused on her own work experience and background rather than the proposed endeavor. In addition, the Director determined that the record did not include sufficient evidence regarding the substantial positive economic effects [REDACTED] would have on the U.S. economy, which is one of the factors highlighted in *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner initially asserts that the Director did not adequately consider the articles and reports she submitted, or [REDACTED] business plan. She states that the articles show the importance of

¹ *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 is discretionary in nature).

² We note that the record includes conflicting statements, including within the business plan, about whether the Petitioner's company would sell prescription eyewear or glasses meant only as fashion accessories.

small businesses such as hers, and that the business plan demonstrates her endeavor's significant potential to employ U.S. workers. Regarding the Petitioner's first point, we acknowledge the importance of the combined effect that small businesses have on the national economy. But in evaluating the national importance of a petitioner's proposed endeavor, we do not consider the impact of the industry, field, or economic sector in which they propose to engage. Rather, we focus on the specific proposed endeavor, which in this case is a single small business that will sell eyewear. *Id.* at 889. So the articles and reports, which do not discuss [redacted] in particular, do not support the national importance of the Petitioner's proposed endeavor.

As for the potential economic impact of her proposed endeavor, the Petitioner asserts on appeal that it will "create jobs and help the United States economy." Although she does not get into specifics in her brief, the business plan for [redacted] includes projections for job creation. In a section titled "Organizational Structure," the business plan notes that in addition to the Petitioner and her husband, the company would employ nine individuals "as soon as we start up this business plan." An organizational chart shows positions encompassing a commercial manager, financial manager commercial, two assistant managers and their assistants, buyer, invoice, marketing design, inventory responsible, and eyewear consultant. Descriptions of the duties for these positions are not provided, nor is the need for these positions explained. However, later on in the "Personnel" section, the plan states that "personnel requirements will be minimal to begin with," and indicates that any labor needed for receiving or shipping would be contracted, while other functions would be filled with part-time employees at minimal wages. In *Dhanasar*, we noted that an endeavor that has "significant potential to employ U.S. workers" could very well have national importance. *Id.* These conflicting statements in [redacted] business plan undermine the Petitioner's claim that its potential for job creation show her endeavor's national importance.

The Petitioner also states in her appeal that her "particular field of endeavor has national implications," and goes on to cite to statistics about the size of the global eyewear market. She also refers to "several articles that supported substantial positive economic effects" without identifying specific articles or passages from those articles. But statistics about the global eyewear industry and articles about online shopping and small businesses do not show how the Petitioner's specific proposed endeavor of owning and operating [redacted] would be of national importance.

With her appeal, the Petitioner submits new evidence, including letters from individuals who state that they have purchased glasses from her. She asserts that these letters demonstrate how her proposed endeavor "has already impacted the live [*sic*] of her clients and therefore, the local community." Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In this case, the Director issued a request for evidence (RFE) seeking further documentation regarding the national importance of the Petitioner's proposed endeavor, and the Petitioner submitted a timely response. So these letters, and the other evidence submitted with the appeal, will not be considered.

The Petitioner also submitted reference letters with her initial filing, and in response to the Director's RFE. For example, Dr. [redacted] describes in her letter how she has been a client

of the Petitioner for years and is pleased with the eyeglass service she provides.³ Dr. [] opines that the Petitioner will impact the lives of her customers in the U.S. “through visual comfort, where more people will meet their ophthalmological needs with multifocal lenses, increasing the selling of these products and moving the U.S. economy.” Similarly, Professor [] writes in his letter that the Petitioner’s proposed endeavor “is of great value to move the optical market, with her enterprise of qualified and differentiated professionals to help the visual health of the population of the United States.” While these letters show that the Petitioner’s clients and former co-workers think highly of her, their claims of her proposed endeavor’s prospective economic benefit to the U.S. economy are not supported in the record. The business plan for [] includes projections of its sales and net profits in its first two years of operation, but does not establish that these figures represent a substantial positive economic effect that would extend beyond the Petitioner and her husband to be of national importance.

Per the discussion above, the Petitioner has not established that her proposed endeavor is of national importance. She has therefore not demonstrated that she meets the requirements of the first prong of the *Dhanasar* analytical framework.

III. CONCLUSION

A petitioner must meet all three prongs of the *Dhanasar* analytical framework in order to establish their eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding the second and third prongs of the framework. *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 an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.

³ All of the reference letters already in the record have been reviewed and considered, including those not directly mentioned in this decision.