



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

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

In Re: 30210494

Date: MAR. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an individual working in the tourism industry, 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 the Petitioner did not establish her eligibility for EB-2 classification or that she merits a waiver of the required job offer, and thus of the labor certification, 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 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 for the underlying classification, the petitioner must then establish eligibility for 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 (AAO 2016), provides the framework

¹ 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.

for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,² 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.

Id. at 889.

II. ANALYSIS

A. Substantial Merit and National Importance

The first *Dhanasar* 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. *Matter of Dhanasar*, 26 I&N Dec. at 889. The term “endeavor” is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), <https://www.uscis.gov/policy-manual>.

Dhanasar’s first prong focuses on the specific endeavor that the foreign national proposes to undertake and its “potential prospective impact.” *Dhanasar*, 26 I&N Dec. at 889. As such, we will first identify the Petitioner’s endeavor as shown in the record. Then, we will evaluate the Petitioner’s evidence in support of the endeavor’s substantial merit and national importance.

The Petitioner’s proposed endeavor involves creating a company, called [REDACTED] with a mission to promote sustainable tourism experiences that benefit local communities, protect the environment, and enhance a traveler’s experience through responsible practices and community engagement.³ She asserts and has provided meaningful evidence to conclude that companies like the one she is proposing to create are aligned with national initiatives promoting green tourism. As such, we agree with the Director’s conclusion that the proposed endeavor has substantial merit.

Because the endeavor has substantial merit, we turn to whether the proposed endeavor is of national importance, as contemplated by *Dhanasar*. The Director determined that although the proposed endeavor is of substantial merit, it is not of national importance as contemplated by *Dhanasar*. Upon de novo review, we agree with the Director’s conclusion for the following reasons.

² *See 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).

³ The Petitioner’s “Detailed Description of Proposed Endeavor Statement” dated May 3, 2023, and “National Importance Statement” dated May 29, 2023, have been reviewed and incorporated by reference into this decision.

The Petitioner describes her endeavor and the impacts that will stem from it in several documents. In her business plan, she explains that the United States will benefit from increased tourism, which will have the ripple effect of promoting sustainable human development, generating jobs, reducing poverty, increasing the U.S.'s gross domestic product, enhancing community development in tourist destinations, and producing socio-cultural and environmental resources a local level. Her plan also describes six actions to support local communities such as “involving residents in tourism planning, to make sure local voices are heard,” “conducting analysis of tourist potentials to devise solutions that are grounded in reality and address the most pressing threats to local environments, people, and wildlife,” among others. The plan also provides projections on her company’s growth, marketing strategies, and organizational structure five years into the future.

She submits articles and reports that discuss ecotourism, sustainable development goals, sustainable travel, the changing future of tourism, and information from the United Nations, U.S. Travel Association, and the U.S. Departments of Commerce and State, which discuss the importance of sustainable tourism. She asserts that because the Biden-Harris Administration has prioritized combating climate change, travel and tourism play a key role in this agenda, and her endeavor is of national importance because it is aligned with these initiatives. She asserts that climate change is affecting tourism destinations, and that extreme weather events are costing billions of dollars annually and threatening tourism economies. She asserts that her endeavor aligns with strategies outlined in the National Travel and Tourism Strategy, which includes supporting underserved communities, promoting resiliency planning, reducing carbon emissions, supporting nature-based solutions, protecting natural assets, building a sustainable tourism ecosystem, and pursuing innovations for timely data on climate-related events. She further argues that her endeavor aligns with the Federal Sustainability Plan, in which the government aims to tackle the climate crisis by prioritizing actions that address climate change and promote a clean energy economy (such as net zero emissions from federal operations by 2050). She also cites to the National Tourism Organization Act (1996), legislation aimed at enhancing tourism activities, to assert that her endeavor aligns with multiple and important government priorities.

On appeal, she cites to *Buletini v. I.N.S.*, 860 F. Supp. 1222, 1233 (E.D. Mi. 1994) and asserts that the Director abused their discretion by failing to consider relevant evidence, and specifically names documentation she provided in her response to the Director’s request for evidence to show that sustainable tourism, climate action, and ecotourism are economic and environmental issues that are the subject of national initiatives. She further contends that she has provided sufficient, probative, and corroborating evidence to establish the substantial positive economic impacts of the proposed endeavor, as well as objective documentary evidence to support her assertions, by a preponderance of the evidence.

At the outset, we agree that an adjudicator should consider all relevant evidence in the record. However, to the Petitioner’s point that her field is a matter of national importance because it aligns with national initiatives, we note that merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. Instead, when determining whether the proposed endeavor has national importance, 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.” *Id.*

Thus, while we acknowledge that the tourism industry is important, this fact is insufficient to establish the national importance of her proposed endeavor. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

We also explained in *Dhanasar* 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 . . . may well be understood to have national importance.” *Id.* at 890. The Petitioner’s business plan projects that by year five, her company will require 12 employees, and 20 independent contractors. It also projects that by year five her company will yield \$166,081 in net profits, and \$1,450,000 in revenue. On appeal, she asserts that hiring even one worker meets the “significant potential to employ a U.S. worker” language from *Dhanasar* and that because she intends to locate her business in a Historically Underutilized Zone HUBZone⁴ in [redacted] Maryland, her endeavor will have a “substantial positive economic effects,” under the ordinary meaning of these terms.

We acknowledge that by design, operating a business in an HUBZone offers several advantages including eligibility for federal contracting preferences, access to set-aside contracts, and potential tax incentives.⁵ However, businesses seeking HUBZone certification must be owned and controlled by U.S. citizens, a community development corporation, an agricultural cooperative, or an Indian tribe. *Id.*⁶ Further, the business’s principal office must be located in the designated HUBZone, and it must be the location where the greatest number of employees perform their work.⁷ Here, there is no indication that the Petitioner’s business meets the requirements for HUBZone certification. Further, to the extent that the Petitioner equates her business being in a HUBZone with *Dhanasar*’s emphasis on job creation leading to “substantial positive economic effects particularly in an economically depressed area,” the evidence does not establish how merely locating her office in an HUBZone is sufficient. And, even if her company were to create jobs in a HUBZone location (a fact she has not established), the economic impact from this potential hiring is too amorphous to be considered of national importance as contemplated in *Dhanasar*.

As to her assertion that hiring even one worker is sufficient to meet the standard in *Dhanasar*, she has not established what the broader economic implications would be to our nation’s economy from the hiring of one U.S. worker, or even that her company would be sufficiently viable to require the hiring of one U.S. worker. Many factors, such as market demand for her services, technological advancements affecting her industry, or changing regulatory conditions that could limit the potential of her endeavor, could affect her ability to successfully hire even one worker. Beyond mere assertions, the Petitioner has not established with independent, corroborating evidence that her company would have the “significant potential to employ U.S. workers” or “other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-890. As such, she has not met her burden by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

As stated above, we acknowledge that the United States and other international organizations, like the United Nations, have addressed climate change and are promoting actions in the area of sustainable

⁴ The HUBZone program promotes business growth in underutilized business zones with the goal of awarding three percent of federal contract dollars to companies that are HUBZone certified. See <https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program>.

⁵ See <https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program>.

⁶ *Id.*

⁷ *Id.*

tourism. This speaks to the substantial merit of her proposed endeavor but does not establish that her business would have the national or global implications she describes. The Petitioner has not provided corroborating evidence to meaningfully understand how her endeavor will result in the impacts she describes. *Matter of Chawathe*, 25 I&N Dec. at 375-76. For example, she provides a letter of interest from the owner and CEO of two restaurants in [redacted] Maryland. His letter expresses his impressions of her past professional endeavors and accomplishments, and states he is interested in expanding his business into a chain of sustainable restaurants. He goes on to explain the importance of the restaurant industry in sustainability, and that he is interested in “improving our business processes,” “implementing new techniques,” and “sustainable strategies to enhance our business processes and services to our clients.” He also extends an offer of employment to the Petitioner as a Sustainability Strategy Consultant. While this letter would be relevant to our analysis under prong two of the *Dhanasar* framework, it is not sufficient, relevant, or probative to establish the national importance of her proposed endeavor. Furthermore, this job offer appears to only impact her employment, but does not establish that her business would expand such that she would require an additional employee. The Petitioner must support her assertions with relevant, probative, and credible evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

We acknowledge the Petitioner’s assertion that sustainable tourism is a growing sector of the market economy, and that her proposed endeavor aims to promote sustainable practices and environmental awareness as part of this dynamic sector. However, we note again that this speaks to the substantial merit of her proposed endeavor, but is insufficient, even when we consider the trends and market growth projections, which she cites, to conclude her endeavor is of national importance. In general, when a proposed endeavor is only likely to benefit the clients or customers served, but would not sufficiently extend beyond those individuals, the endeavor is unlikely to have the significant potential to broadly enhance societal welfare in a manner consistent with how national importance is contemplated by the Act. *See* section 203(b)(2) of the Act. For example, in *Dhanasar*, we determined that while proposed classroom teaching activities in STEM may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance. *See Dhanasar*, 26 I&N Dec. at 893. Similarly, here, while the services the Petitioner offers to restaurants or other tourism-related businesses might be beneficial to them, this is not indicative of a broader impact on her field of sustainable tourism.

Here, the Petitioner has not established her proposed endeavor stands to sufficiently extend beyond her customers to impact her field more broadly at a level commensurate with national importance. Nor has she shown that the work she proposes to undertake offers original innovations that contribute to advancements or otherwise has broader implications for her field. Furthermore, the Petitioner has not demonstrated that her specific endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation *directly* attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner’s endeavor would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

As to the recommendation letters provided, these generally portray the Petitioner as an ecotourism professional with positive attributes. In as much as the writers view her in highly favorable terms, we note these opinions are relevant to *Dhanasar*’s second prong, when we evaluate whether the Petitioner

is well-positioned to advance her endeavor, but do not establish the national importance of her endeavor. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (standing for the proposition that we may, in our discretion, use opinion statements submitted by a petitioner as advisory but, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that opinion); *see also Matter of Chawathe*, 25 I&N Dec. at 375-76 (standing for the proposition that a petitioner must support their assertions with relevant, probative, and credible evidence).

B. EB-2 Classification and *Dhanasar's* Second and Third Prongs

As the Petitioner has not established the national importance of her proposed endeavor, we decline to reach and hereby reserve the Petitioner's arguments that she meets the requirements for EB-2 classification as an advanced degree professional, and that she has established *Dhanasar's* second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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, she has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.