



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

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

In Re: 30214228

Date: MAR. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing and digital strategist, seeks classification as a member of the professions holding an advanced degree. *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. The Director concluded the Petitioner qualified as an advanced degree professional, but further determined that she did not demonstrate her eligibility for a national interest waiver. 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.

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 USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

¹ *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third

- 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, a native and citizen of Colombia, stated in support of the petition that she worked on several “music assessment projects” abroad and that she intended to “bring her skillset to the United States to contribute to the American culture and entertainment industry.” The Petitioner indicated she would “provide artists with digital and marketing strategy insights and strengthen the music business industry.” She also asserted that her work would benefit the mental wellbeing of U.S. families, generate a more inclusive and diversified environment in the U.S. music industry, and enhance the country’s connection to Latin culture. The Petitioner pointed to submitted articles and reports suggesting that music can help individuals cope with social isolation, uncertainty, and hardship, while also reducing anxiety and increasing cognitive wellbeing. She further asserted that her proposed endeavor would contribute to the development of music platforms and the circulation of Latin musical groups at the national and international level.

The Petitioner pointed to several initiatives on the part of the Biden Administration to promote the arts in the wake of the COVID-19 pandemic, including over \$57 million in funding provided by the National Endowment for the Arts to 567 arts organizations. She asserted that her proposed endeavor in music closely aligns with the interests of the federal government and “supports a crucial facet of America culture.” The Petitioner further emphasized that the Biden Administration recognized the importance of Hispanic culture through a press release and issued an executive order to advance diversity, equity, inclusion, and accessibility in the federal workforce. She noted that her proposed endeavor would focus on “creating bridges and significant connections between American and Latin-American people, creating a diversified and inclusive music sector in the United States.” In addition, the Petitioner stated that the “Latino-music boom” was beneficial to the U.S. economy, pointing to the growth of music streaming platforms, and her commitment to continuing to expand the music streaming market in the United States “through the usage of a music streaming platform which can meet artists and representatives for musical business purposes at the local stage.” In sum, the Petitioner indicated that her proposed endeavor was nationally important “because it addresses a matter that has been explicitly supported by the U.S. government through numerous regulations and initiatives.”

The Director later issued a request for evidence (RFE) concluding the Petitioner had established that her proposed endeavor had substantial merit. However, the Director indicated the Petitioner did not demonstrate that her proposed endeavor would have national importance. The Director stated the Petitioner did not establish that her proposed endeavor would extend beyond her clients to impact U.S. interests or its entertainment industry more broadly. As such, the Director requested that the Petitioner submit additional evidence to establish the endeavor’s potential prospective impact, such as documentation to substantiate how it would have national or global implications in the field, have significant potential to employ U.S. workers or have other substantial economic effects, broadly

in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

enhance societal welfare or cultural or artistic enrichment, or significantly impact a matter that a government entity has described as having national importance.

In response, the Petitioner largely reiterated the same assertions provided in support of the petition. However, she did submit an additional description of her proposed endeavor and its national importance. The Petitioner pointed to her ten years of experience working in the music industry using digital marketing, event production, and brand building and asserted that she could help Latin music artists establish productive and culturally rich products in the U.S. market and reach new audiences there. She further indicated that she could build bridges for American artists to communicate better with Latin audiences, thereby generating economic and cultural impacts. The Petitioner stated that her work would be nationally important because it would “contribute to the global competitiveness of the music industry, cultural enrichment, social wellbeing, and ultimately the economy through her contributions to the music industry sector, specifically relating to Latino artists.” In support of these assertions, she again pointed to articles and reports discussing how music can promote mental health and wellbeing and Biden Administration initiatives to promote the arts and Latin culture.

As discussed, the Director concluded the Petitioner established that her proposed endeavor had substantial merit. However, the Director determined that the Petitioner did not demonstrate the national importance of her proposed endeavor. The Director concluded that the Petitioner did not sufficiently address how her proposed endeavor, acting as a marketing and digital strategist assisting Latin musicians, would extend beyond her clients to impact U.S. cultural interests or the entertainment industry more broadly. Likewise, the Director further determined that the Petitioner did not demonstrate that her endeavor would broadly enhance social welfare as claimed or lead to substantial positive economic effects.

On appeal, the Petitioner contends that the Director’s analysis reflects a misunderstanding of the facts and misapplication of the law representing an abuse of discretion. The Petitioner asserts the Director did not focus on all the submitted evidence, specifically ignoring how her work would directly address national initiatives promulgated by the Biden Administration. The Petitioner further states the Director overemphasized that she did not provide probative expert letters to support the national importance of her endeavor. The Petitioner contends that the Director imposed novel and arbitrary requirements and failed to properly weigh a letter submitted in response to the RFE from the [redacted] [redacted]. This letter states that the Petitioner, through her skills and experience, could “aid Latin artists in establishing productive and culturally rich products for the U.S. market” and that she would have “a vital role to play in supporting the growth and success of our artists in the Latino community.” The Petitioner asserts that she provided “ample documentation” to corroborate “the social and cultural benefits” of her proposed endeavor.

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.” *Matter of 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 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 her work.

First, on appeal and throughout the record, the Petitioner emphasizes her skills and experience in digital marketing and the music industry, stating that this would aid Latin artists in the United States. But the Petitioner’s knowledge, skills, and experience in her field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*’s first prong.

The Petitioner submitted generic and unsupported assertions regarding the potential prospective impact of her proposed endeavor. For instance, the Petitioner stated she would “provide artists with digital and marketing strategy insights and strengthen the music business industry,” but she provides little detail on the digital and marketing insights she would provide or the Latin artists she would work with in the United States. The Petitioner further asserted that her proposed endeavor would benefit the mental wellbeing of U.S. families and generate a more inclusive and diversified environment in the U.S. music industry. Although the Petitioner provided articles and reports suggesting that music can positively impact mental wellbeing, there is little description or supporting evidence to demonstrate that her proposed work with Latin artists in the United States would have a wide-ranging national impact on the mental wellbeing of U.S. families or broadly promote the diversification of the music industry, where according to the Petitioner, Latin artists already accounted for over \$510 million in revenue 2022. She further asserted that her proposed endeavor would contribute to the development of music platforms, yet there is little explanation or documentation to substantiate how her work would impact large music platforms she discussed, such as Apple Music and Spotify, already accounting for, according to documentation submitted by the Petitioner, approximately \$5.46 billion in revenue annually. The Petitioner must resolve ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the Petitioner pointed to several initiatives of the Biden Administration to promote the arts in the wake of the COVID-19 pandemic, including over \$57 million in funding provided by the National Endowment for the Arts. Although we acknowledge this initiative on the part of the Biden Administration deals generally with the arts, the Petitioner did not sufficiently explain how her proposed endeavor would promote this effort, particularly since she did not assert that she was a recipient of this funding. The Petitioner further emphasized that the Biden Administration had recognized the importance of Hispanic culture through a press release and issued an executive order to advance diversity, equity, inclusion, and accessibility in the federal workforce. However, again, the Petitioner submits little detail as to the specifics of her proposed work in the United States and how it would have a national level impact on diversity, equity, inclusion, and accessibility beyond the artists, who have yet to be identified, that she may work with in the United States. We accept the fact that the Biden Administration has promoted the arts, the contribution of Latin culture, and diversity and inclusion, but the connection to the Petitioner’s proposed endeavor is vague given that none of these initiatives specifically discuss the promotion of Latin music specifically, even if it were clear how her proposed work would impact the music industry on a national level.

On appeal, the Petitioner states that the Director overemphasized the fact that the Petitioner did not provide probative expert letters to support the national importance of her endeavor. We disagree, as

the Director merely compared the current matter to *Dhanasar*, controlling law on this matter, and emphasized the lack of objective supporting evidence to support the potential national impact of her proposed endeavor. The Petitioner also contends that the Director failed to properly weigh a letter submitted in response to the RFE from the [REDACTED]. However, the referenced letter merely reiterates similar unsupported assertions provided by the Petitioner. For instance, the letter stated that the Petitioner’s work would “aid Latin artists in establishing productive and culturally rich products for the U.S. market” and that she would have “a vital role to play in supporting the growth and success of our artists in the Latino community.” But as noted by the Director, there is little objective evidence to support these ambiguous assertions on the part of the Petitioner, such as the artists she would work with, the national level products her proposed endeavor would lead to, or the growth in Latin music on a national level that would result from her work. The Petitioner asserts that it provided “ample documentation” to corroborate “the social and cultural benefits” of her proposed endeavor. We disagree and concur with the Director that she has not supported her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor would rise 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. *Matter of Dhanasar*, 26 I&N Dec. at 893. As noted by the Director, the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond her proposed clientele, even if such clientele were sufficiently identified and documented. As such, the Petitioner has not demonstrated that her proposed endeavor would have a broad influence commensurate with national importance.

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, we decline to reach and hereby reserve the Petitioner’s arguments with respect to the second and third prong outlined in *Dhanasar*. *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).

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.

ORDER: The appeal is dismissed.