



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

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

In Re: 30354394

Date: MAY 1, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. 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, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that 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. *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).

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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

## II. ANALYSIS

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 of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as a plan to work as an "education administrator." On the Form I-140, Immigrant Petition for Alien Workers, the Petitioner specifically stated that she would "plan, direct, or coordinate student instruction, administration, and services, as well as other research and educational activities." In a statement submitted in support of the petition, she indicated that her endeavor would involve "operat[ing] my duly filed and registered company [redacted], which] will serve the educational sector in the U.S., providing academic and educational consulting services." The Petitioner submitted a business plan, which indicates that the company, located in [redacted] Florida, "provides consultancy services to clients interested in comprehensive business restructuring of the organization." The business plan elaborates that the company's services include "consultancy focused on school expansion and management, marketing strategies, strategic planning, IT systems, anti-bullying strategies, and financial and administrative management." More specifically, the business plan asserts that the Petitioner would work as the company's director, and that she would "allocate material, human, and financial resources to implement organizational policies and programs and support her investment decisions." The business plan also states the Petitioner would "assess hiring needs, direct and oversee the employee recruitment process, and develop training programs," "oversee and assess employee performance," "oversee sales and marketing campaigns, both online and offline," and perform similar duties.

The business plan indicates that the company would employ 14 workers, including the Petitioner, within the first five years of operation, specifically: four "operational directors," two "HR consultants" and "sales representatives," respectively, and one "HR and finance consultant," "administrative and customer service manager," "IT operational manager," "marketing manager," and "sales manager," respectively. The record contains information the Petitioner filed with the State of Florida Department of State, Division of Corporations, indicating that the company's principal address matches the address of the Petitioner's private residence provided on the Form I-140. The record does not reconcile whether all 14 individuals to be employed by the Petitioner's company would work at her private residence. We further note that the Petitioner provided the same private residential address

on appeal, despite having notified USCIS that she relocated from that address in 2022, creating confusion regarding both her actual physical address and the principal address of her company. Federal regulations require noncitizens to report each change of address within 10 days of such change. 8 C.F.R. § 265.1.

The record does not reconcile how the Petitioner's consultancy company "focused on school expansion and management, marketing strategies, strategic planning, IT systems, anti-bullying strategies, and financial and administrative management" would involve planning, directing, or coordinating student instruction, as she stated the position would entail on the Form I-140. Relatedly, the record does not reconcile how the Petitioner's position as the director of her consultancy company would involve planning, directing, or coordinating student instruction, as she stated the position would entail on the Form I-140. Therefore, the record does not establish how the Petitioner would perform the duties of an education administrator through her proposed endeavor, as asserted on the petition.

The Director acknowledged that "USCIS finds the proposed endeavor has substantial merit." However, the Director noted that the record does not contain "documentary evidence which shows that [the Petitioner's] proposed endeavor will broadly impact the education field or the U.S. economy." The Director also noted that the record has not "sufficiently demonstrated the particular work [the Petitioner] proposes to undertake offers original innovations that contribute to the advancements in her field of endeavor, or otherwise has broader implications in her field." The Director acknowledged the business plan's anticipation of employing 14 workers, including the Petitioner, with additional indirect jobs, and tax revenue estimates. However, the Director observed that the record does not establish "that [the Petitioner's] company's future staffing levels, business activity, and related tax revenue stand to provide substantial economic benefits in Florida (where the [P]etitioner states the business will be initially established) or the United States." The Director further explained that the Petitioner's references to generalized information and her prior academic and employment experiences do not inform how the specific endeavor she proposes to undertake may have national importance. Ultimately, the Director concluded, "the [P]etitioner has not established that the proposed endeavor is of national importance." The Director further concluded that the record does not satisfy the second or third *Dhanasar* prongs. See *Matter of Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner references her prior academic and employment experiences and "industry reports and articles" that provide generalized information related to education, reiterating that she believes they establish her proposed endeavor has national importance. The Petitioner also appears to address some other petitioner's benefit request on appeal, stating the following:

Along these lines, Appellant's proposed business endeavor impacts nationally important matters, and the national economy, explicitly by:

- Offering economic convenience and agility, as he is able to secure the success of small and medium sized U.S. companies, while also creating solutions that will profoundly impact human life;
- Promoting growth and expansion and drive change with innovation, which thus promotes and drives national economic advantage; and,
- Stimulating the domestic job market, as enhanced business actions through his own business that leads to the generation of new jobs for American workers.

Relatedly, the Petitioner describes herself on appeal as “an entrepreneur in the field of business with solid experience in this area of international trade,” which is inconsistent with her statement on the Form I-140 that she would work as an “education administrator,” who would “plan, direct, or coordinate student instruction, administration, and services, as well as other research and educational activities.”

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on “the specific endeavor that the [noncitizen] proposes to undertake” and “we consider its potential prospective impact,” looking for “broader implications.” *See id.* at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” or those with “significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

We first note that neither the Petitioner’s prior academic or work experience nor “industry reports and articles” that provide generalized information related to education are material to whether the proposed endeavor may have national importance. An individual’s prior academic and work experience relates to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—but it does not inform how the potential prospective impact of the specific endeavor an individual proposes to undertake may have the type of broader implications indicative of national importance, as contemplated by the first *Dhanasar* prong. *See id.* at 888-91. In turn, the “industry reports and articles” in the record, including those the Petitioner references on appeal, do not address the Petitioner, the specific endeavor she proposes to undertake, and how the endeavor may have the type of broader implications indicative of national importance. *See id.* at 889-90. Because the Petitioner’s prior academic or work experience and the generalized “industry reports and articles” do not relate to how the specific endeavor the Petitioner proposes to undertake may have national importance, they do not establish the proposed endeavor has national importance, and we need not address them further.

Next, the Petitioner does not clarify on appeal which man to whom she refers in her brief, quoted above, nor does she elaborate on how the specific endeavor she proposes to undertake relates to that other individual’s ability “to secure the success of small and medium sized U.S. companies, while also creating solutions that will profoundly impact human life.” We note that the Petitioner’s proposal to “plan, direct, or coordinate student instruction, administration, and services, as well as other research and educational activities” does not appear to be related to securing the success of small and medium sized U.S. companies. Likewise, the Petitioner does not explain on appeal how the other, unspecified individual’s plan to promote some undefined “growth and expansion and drive change with innovation,” implicates the specific endeavor she proposes to undertake, nor does the record elaborate on how the Petitioner’s endeavor may involve some kind of innovation commensurate with national importance. The Petitioner also does not elaborate on how the unnamed man’s vague “business actions” will stimulate the domestic job market, what the tangible results of those business actions will be, and how this other individual’s “business actions” relate to the specific endeavor the Petitioner proposes to undertake.

Next, the Petitioner does not explain why she asserts for the first time on appeal that she is “an entrepreneur in the field of business with solid experience in this area of international trade,” nor does she explain how international trade relates to the specific endeavor she proposes to undertake, specifically working as an “education administrator” who would “plan, direct, or coordinate student instruction, administration, and services, as well as other research and educational activities,” as she specifically asserted on the Form I-140. A petitioner must establish eligibility for the benefit sought at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998). Because the record does not elaborate on how these unexplained references to international trade relate to the specific endeavor the Petitioner proposes to undertake, as described at the time of filing, they present a new set of facts that cannot—and do not—establish eligibility, and we need not address them further. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

Setting aside the Petitioner’s puzzling references on appeal to some unspecified man promising “success of small and medium sized U.S. companies” and the Petitioner’s equally unsubstantiated and irrelevant claim of “solid experience in this area of international trade,” the record does not establish how the proposed endeavor, as described at the time of filing, may have national importance. Even to the extent that the business plan’s discussion of the Petitioner working as the director of a company providing business-expansion consultancy services to schools relates to the Petitioner’s statement on the Form I-140 that she would “plan, direct, or coordinate student instruction” as an “education administrator,” the record does not establish how either of those may have national importance. Although the business-expansion consultancy services may benefit the schools for which the Petitioner’s company provides its services, the record does not establish how those consultancy services may have the type of “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” contemplated by *Dhanasar*. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. In turn, the business plan indicates that the company anticipates employing the 14 workers, including the Petitioner, noted above, in [redacted] Florida, indirectly generating additional, unspecified jobs at unknown locations. However, the record does not establish how the staff of 14 workers apparently at the Petitioner’s current or former private residence, and other unspecified indirect jobs at unknown locations, demonstrate the type of “significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area” contemplated by *Dhanasar*. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.