



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

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

In Re: 31111420

Date: MAY 09, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a systems engineer, seeks second preference immigrant classification (EB-2) 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 EB-2 immigrant 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 Petitioner qualified for the EB-2 classification as a member of the professions holding an advanced degree, but 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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. *Id.*

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The record demonstrates that the Petitioner earned a bachelor’s degree in systems engineering from [REDACTED] in Venezuela in 2003 and has over 20 years of professional experience in the information systems field, working at various industries in improving operational efficiency in business processes.

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. The Director concluded that the Petitioner did not establish that her endeavor meets the first prong of *Dhanasar*.² On appeal, the Petitioner does not provide any new evidence but asserts that the Director’s analysis of *Dhanasar*’s first prong overall “contains instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion.” However, we find the Petitioner’s claims unpersuasive for the reasons discussed below and agree with the Director’s determination.

The Petitioner initially stated that her proposed endeavor is to “apply my experience as a systems engineer in the mental health services industry to advance the design and development of novel technological platforms that facilitate the delivery of virtual clinical services in the mental health industry in the United States.” The Petitioner claimed that she “intend[s] to create new all-in-one technology platforms to support, strengthen, and meet the demand for mental health services that the American population requires” and “this will be achieved through the implementation of modular and comprehensive software solutions, which would modernize, automate, expand, and diversify the clinical and therapeutic services offered by companies in this area of health.”

Instead of discussing the details of her endeavor and the unique software platform, the initial evidence supporting the national importance largely consisted of general articles and reports on mental health, various federal legislations on disability, rehabilitation, and mental health parity, and the Biden administration’s 2022 initiative highlighting strategies to address the national mental health crisis, along with a list of STEM designated degree program list from the Department of Homeland Security

² The Director further concluded that the Petitioner met the second prong of being well-positioned to advance her endeavor but did not satisfy the balancing factors under the third prong of the *Dhanasar*’s analytical framework.

(DHS). Based on these documents, the Petitioner claimed that her endeavor has national importance because it is “tailored to meet national public health objectives that improve mental health” and “is also intimately aligned with numerous government goals, programs, initiatives, legislation, and regulations.”

In response to the Director’s request for evidence (RFE), the Petitioner offered more generalized articles and reports of technology innovation, the shortage of software developers and engineers, the use of technology for mental health treatments, and the announcement on funding the Substance Abuse and Mental Health Services Administration (SAMHSA). The Petitioner also submitted updated personal statements and a business plan. In the business plan, the Petitioner claimed that she will “establish and oversee the operations of [redacted] and “create a unique technological platform, implementing a system of Multipurpose Virtual Clinical Services based on an ISM (Modular Software Integration) solution, which combines web and mobile technologies.” However, the Director concluded that the Petitioner has not shown her endeavor stands to sufficiently extend beyond her company [redacted] or its clients to impact the mental health field or the U.S. economy broadly at a level commensurate with national importance.

On appeal, the Petitioner contends that *Dhanasar* does not require the Petitioner to demonstrate a broader impact in the field “to survive the requirements of the First Prong.” But we noted in *Dhanasar* that “we look for broader implications” of the proposed endeavor and one of the criteria for demonstrating national importance can include “national or even global implications within a particular field such as those resulting from certain improved manufacturing processes or medical advances.” *Id.* at 889. Here, the Petitioner’s main assertion is that she will “advance the design and development of novel technological platforms that facilitate the delivery of virtual clinical services in the mental health industry.” Therefore, the Director considered the appropriate standards laid out by *Dhanasar* and properly evaluated the endeavor’s broad implications in the field but concluded that the record lacks specific and persuasive details regarding the proposed endeavor and its impact. The Petitioner has not submitted corroborating evidence to describe in detail her “novel technological platforms” or suggest that her methodologies somehow differ from or improve upon those already available and in use in the United States.

The Petitioner further contends that she submitted “numerous government initiatives and regulations that illustrate the impact of the endeavor on a matter considered nationally important” and that the Director erred by dismissing such evidence. However, in determining national importance, the relevant question is not the importance of the field, industry, or professional in which the individual will work; instead, the focus is on the “the specific endeavor that the foreign national proposes to undertake” and the endeavor’s “potential prospective impact.” *Id.*

In *Dhanasar*, we gave significant weight to “probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests” and “detailed expert letters describing U.S. Government interest” in Dr. Dhanasar’s specific research. *Id.* at 892. Here, the Petitioner has not provided similar evidence, such as the type of expert opinion evidence or letters from government

entities detailing how her specific endeavor impacts a matter that is a subject of national initiatives.³ None of the articles and reports specifically mention the Petitioner's endeavor or discuss the government's interest in promoting the use of the Petitioner's innovation or solutions. Therefore, the Director properly noted the deficiency in the record documenting the interest of the federal government or other relevant national agencies in the Petitioner's specific proposal.

The Petitioner also contends that the Director imposed novel criterion outside the precedent decision by its overemphasis on geographical scale of the endeavor. However, the Petitioner has not pointed to specific instances where the Director overly emphasized such geographical scale. Here, the Director evaluated the endeavor's broad reach either in a region or on the nation as a whole, and its potential to create jobs, provide substantial economic impacts, or impact the field. *Id.* at 889-90.

In addition to evaluating the endeavor's broad impact to the field, we noted 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, for instance, may well be understood to have national importance." *Id.* at 890. The Petitioner claims that the plan to hire approximately 20 employees in five years "is more than enough to meet the plain language of the criterion when coupled with the ample projection-based evidence provided in the record with respect to the likelihood of said employment of US workers." Furthermore, the Petitioner asserts that her endeavor is not centered around its economic effects but "rather, the present endeavor meets the criterion of national importance mainly because . . . it will broadly enhance societal welfare."

As the Petitioner submitted a business plan that provides various staffing and financial projections, the Director properly evaluated the endeavor's potential to employ U.S. workers or for other substantial positive economic effects as contemplated by *Dhanasar*. *Id.* Any basic economic activity has the potential to positively impact the economy and social welfare; however, the Petitioner has not offered a sufficiently direct connection between her proposed endeavor's activities and any demonstrable societal welfare or substantial economic activities. Although the Petitioner indicated that her consulting work will create tax benefits and payrolls for 20 employees, the record does not provide objective and corroborating details as to how such projections are created, aside from generalized claims and statements. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Finally, we are not persuaded by the Petitioner's claim that "none of the evidence particularly submitted for this prong was analyzed but generally referred to and disregarded without adequate grounds." The Director has clearly acknowledged and analyzed various documents on record but concluded overall that the quality of the evidence lacked probative value in supporting national importance of the endeavor. To determine whether a petitioner has met her burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *see also Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

³ The Director discussed two advisory opinion letters from [redacted] but noted that they repeat the information already provided in the Petitioner's support letters and business plan and generally address the importance of the mental health field but do not discuss the proposed endeavor with persuasive and corroborating details. The authors of these letters also do not claim to be experts in the field who can evaluate the cutting-edge technology of mental health software platforms.

The Petitioner primarily relied on articles and government reports that do not discuss her specific endeavor to demonstrate national importance. Such evidence shows that her endeavor has substantial merit but does not establish that her endeavor is of national importance under the *Dhanasar*'s first prong. Although we acknowledge that mental health is an important issue for the United States, the Petitioner has not provided sufficient evidence corroborating that her endeavor of creating software platforms for her clients would broadly assist the mental health industry such that it rises to the level of national importance.

Based on the foregoing, we conclude that the Petitioner has not established the national importance of the proposed endeavor and has not met the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner's arguments regarding her eligibility under the 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, we find that she has not established eligibility for 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.