



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

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

In Re: 33568573

Date: NOV. 22, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the field of travel and tourism, 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 Nebraska Service Center denied the Petitioner’s Form I-140, Immigrant Petition for Alien Workers, concluding that the Petitioner did not establish that she merited a national interest waiver. The Director dismissed subsequently filed combined motions to reopen and reconsider. 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

As a preliminary matter, we emphasize that the appeal before us relates, in part, to the Director's April 2024 dismissal of the Petitioner's combined motions to reopen and reconsider, as well as the June 2023 denial of her Form I-140. *See* 8 C.F.R. § 103.5(a)(6).

In the initial June 2023 decision, the Director concluded that the Petitioner's proposed endeavor had substantial merit. The Director further concluded, however, that the Petitioner did not submit sufficient evidence to establish that her proposed endeavor has national importance; that she is well positioned to advance the proposed endeavor; and 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, as required under the *Dhanasar* analytical framework described above.²

The Petitioner filed combined motions to reopen and reconsider the Director's decision. On motion, the Petitioner submitted two new letters of recommendation, noted a factual error in the Director's decision, and offered the same or similar claims as to her eligibility for the national interest waiver that she previously made before the Director. The Director determined they would not consider the new evidence, specifically the letters of recommendation, on motion to reopen because they were created after the filing of the Petitioner's Form I-140, and that she did not provide pertinent precedent decisions to support her arguments on motion to reconsider as is required by regulation. *See* 8 C.F.R. § 103.5(a)(2), (3) (setting forth motion filing requirements). The Director therefore dismissed the motions.

On appeal, the Petitioner claims the Director erred in dismissing the combined motions to reopen and reconsider and in determining that she did not establish eligibility for a national interest waiver under the *Dhanasar* analytical framework.

Upon de novo review of the record, we agree with the Director's conclusion that the Petitioner has not established her proposed endeavor is of national importance under prong one of *Dhanasar* and will dismiss the appeal.

The first prong of the *Dhanasar* analytical framework, regarding 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. *Matter of Dhanasar*, 26 I&N Dec. at 889. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, the relevant question is not the importance of the industry or profession in which the individual will work;

² The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree, as is required for the underlying EB-2 classification, in a request for evidence (RFE). The Director did not, however, specifically include this conclusion in its initial decision.

instead, we consider the proposed endeavor's potential prospective impact, and "look for broader implications." *Id.* In *Dhanasar*, we noted that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Additionally, "[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's proposed endeavor is to create a company in the United States offering travel-related services including through development of an online portal. In support of her petition, the Petitioner has submitted a business plan, wherein, she claimed that the U.S. economy is in dire need of increased tourism activity that helps lower recession fears and adds to the U.S. gross domestic product. The plan reflected that her company would be located in [] Virginia, and have five employees in the first year of operation. By year five of operations, she claimed the company would have a minimum of 15 employees.

She also provided an expert opinion letter that highlights her experience in business administration and human resources and generally reproduces information contained in the business plan. The opinion letter discusses the importance of the travel and tourism industry to the national economy and claims that the Petitioner's proposed endeavor will contribute to the national economy through job creation and taxes generated and will enhance societal welfare and cultural enrichment through customers' use of their online portal.

Finally, the Petitioner submitted letters of recommendation³ and industry articles and reports. These submissions generally speak to the Petitioner's character and business experience, and the importance of small businesses, entrepreneurship, and the travel and tourism industry in the United States.

On appeal, the Petitioner claims that the national importance of her proposed endeavor lies in its capacity to enhance the overall resilience and stability of business across the nation and highlights the importance of the tourism and travel industry, entrepreneurship, and small businesses to the economy of the United States.

We acknowledge the evidence of the Petitioner's experience in the field of business management as described in her business plan, expert opinion letter, and letters of recommendation, as well as articles and other evidence discussing the overall impact travel and tourism has on the economy of the United States. Our focus, however, is on the specific endeavor that the Petitioner proposes to undertake, rather than her credentials and experience or the importance of the industry or profession in which the individual will work. *Matter of Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner has not provided sufficient information and evidence to demonstrate the benefit of opening a travel and tourism company has broader implications in the travel and tourism industry in the United States or globally, or that the company and its specific online portal offers original innovations to advance, or otherwise has broader implications in, the field of travel and tourism at a level commensurate with national importance. Additionally, the Petitioner's general assertions regarding the contributions her proposed

³ To the extent the Director determined they would not consider these letters of recommendation submitted on motion because they were created after the filing of her Form I-140 and did not establish eligibility at the time of filing, we disagree. However, we need not address this because as stated here, the record, including the new recommendation letters, is insufficient to establish eligibility under prong one of the *Dhanasar* analytical framework.

endeavor will make to the national economy, including the unsupported projections in her business plan and generalized conclusions in the expert opinion letter, are insufficient to demonstrate that her proposed endeavor would have national economic impact as she claims through job creation and taxes generated. Finally, even if the record showed that the financial projections in the business plan regarding revenue growth and job creation are well-founded, the Petitioner's evidence does not establish that the projected revenue or number of jobs expected to be created by her proposed endeavor initially, or over a five-year period, would have *substantial* positive economic effects, particularly in an economically depressed area.

III. CONCLUSION

Accordingly, the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, requiring that she demonstrate her proposed endeavor is nationally important. We therefore conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. As noted above, the Director also concluded that the Petitioner did not establish she was well positioned to advance her proposed endeavor, or 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 under the remaining *Dhanasar* prongs. While the Petitioner contests these conclusions on appeal, because our determination that the Petitioner's proposed endeavor is not nationally important is dispositive of her appeal, we decline to reach and hereby reserve the appellate arguments on these issues. *See INS v. Bagamasbad*, 429 U.S. at 25; *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.