



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

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

In Re: 34795428

Date: FEB. 03, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an environmental engineer, 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. The Director concluded that although the Petitioner is an advanced degree professional and her endeavor is of substantial merit, the record did not establish that the Petitioner's proposed endeavor is of national importance, that she is well-positioned to advance her 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. 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

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. 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 U.S. Citizenship

and Immigration Services (USCIS) may, as matter of discretion,¹ 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.

II. ANALYSIS

The Director determined that the Petitioner qualifies for EB-2 classification as an advanced degree professional holding a U.S. equivalent bachelor's degree with at least five years of progressive post-degree experience in the field of specialty. 8 C.F.R. § 204.5(k)(1)-(2), (k)(3)(i)(B). The Petitioner submitted a copy of her "título de Ingeniero Ambiental," or environmental engineer degree from Colombia, her university transcript, and letters from employers.² From the evidence provided, it is unclear if the Petitioner's degree is equivalent to a U.S. bachelor's degree.³ The Petitioner submitted job letters indicating she worked for one employer as a secondary fiber warehouse supervisor for over five years and as "chief wholesale channel" at another for over five years. *See* 8 C.F.R. § 204.5(k)(3)(i)(B), 8 C.F.R. § 204.5(g)(1). It is unclear whether her positions at either job can be considered post-baccalaureate experience in the specialty as the regulation requires. However, this does not form the basis of our dismissal, but the Petitioner must resolve these issues in any filings where an advanced degree is required.

Because the issue of whether the Petitioner's endeavor is of national importance is dispositive of her appeal, we decline to reach, and hereby reserve our decision on whether the Petitioner qualifies for EB-2 classification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

The issue on appeal is whether the Petitioner warrants a national interest waiver. The Director found that although the Petitioner's proposed endeavor has substantial merit, the record did not demonstrate

¹ *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

² For purposes of determining whether a foreign degree is equivalent to a U.S. bachelor's degree, USCIS reviews the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), to confirm the claimed equivalency of a foreign degree. *See* <https://www.aacrao.org/edge>.

³ According to AACRAO EDGE, a "Título Profesional represents attainment of a level of education comparable to a bachelor's degree in the United States." The Petitioner's degree states that her degree is "título de Ingeniero Ambiental" and the translation provided refers to the degree as "Environmental Engineer." It is unclear whether the Petitioner's degree is the same as a "Título Profesional." The burden of proving eligibility for the benefit sought remains entirely with the petitioner. *See* section 291 of the Act, 8 U.S.C. §1361. The record does not contain any educational evaluation to evidence the degree's equivalency. We note that the Director did not ask for additional evidence regarding EB-2 classification in the RFE.

that it has national importance, that she is well-positioned to advance her endeavor, or that on balance it would be beneficial to the United States to waive the job offer requirement and thus of a labor certification.

Because a petitioner must establish that they meet all three prongs of the *Dhanasar* framework to obtain a national interest waiver, if even one prong is not established, a petitioner is ineligible for a waiver. We conclude that the Petitioner does not meet the national importance factor of prong one.

A. Substantial Merit and National Importance

The first 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 Petitioner, an environmental engineer, plans to establish an environmental consulting company as her proposed endeavor. Citing her fifteen year "journey within the recycling industry," the Petitioner will bring a "holistic approach to consulting...that comprehensively addressed [sic] the acquisition and marketing of recycled raw materials, [and] sustainable solid waste management." She states that her endeavor is a "catalyst for change, championing the cause of environmental sustainability through innovative recycling programs." The Petitioner aims on "generating income and job opportunities through the development and implementation of recycling programs." Her company will "specialize in developing and implementing recycling programs for local governments and municipalities."

Following the Director's initial review, the Director issued a Request for Evidence (RFE) allowing the Petitioner an opportunity to submit additional evidence to attempt to establish eligibility for a national interest waiver.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification from a U.S. employer. The Director concluded that the Petitioner had not demonstrated the national importance of the proposed endeavor, that the Petitioner was well-positioned to advance the 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.⁴ Specifically, the Director determined that the evidence was insufficient to show the prospective potential impact of the Petitioner's endeavor had broader implications to the overall field to establish national importance. The Director found that the evidence did not show that the proposed endeavor offered benefits that would impact the field more broadly. Further, the Director found that the evidence did not demonstrate that the endeavor had the potential to provide substantial positive economic effects.

⁴ The Director determined that the Petitioner's endeavor is of substantial merit. We agree. The endeavor's merit may be demonstrated in areas including, but not limited to, business, entrepreneurship, science, technology, culture, health, or education. The Petitioner's plan to establish an environmental consulting meets this requirement.

Likewise, the Director found that the Petitioner had not shown that her endeavor's level of projected employment would have the potential to provide substantial positive economic effects to the region her endeavor would be located in or to the United States. Finally, the Director concluded that the Petitioner had not submitted a detailed description of her endeavor along with supporting documentary evidence that demonstrates that the endeavor will have potential prospective impact to rise to a level commensurate with national importance under *Dhanasar*.

On appeal, the Petitioner contends that she has satisfied all three prongs of the *Dhanasar* framework. As to national importance, the Petitioner states that the Director erred in "limit[ing] the analysis to economic outcomes by stating the petitioner's endeavor lacked broader implications across the field to establish national importance." She refers to this potential narrow focus as arbitrary and capricious. Further, the Petitioner contends that the Director erred in not finding that her endeavor had potential prospective impacts or broader implications. She asserts that her endeavor has broader implications by "promoting resource efficiency, reducing waste, and advancing environmental stewardship." The Petitioner also argues that the Director incorrectly applied the preponderance of the evidence standard.

Regarding the standard of review, we agree with the Petitioner that the correct standard of review in this case is the preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). This standard requires that the evidence demonstrate that the Petitioner's claim is "probably true, where the determination of truth is made based on the factual circumstances of each individual case." *Id.* at 376, citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989) (internal quotes removed).

However, here the Petitioner has not explained how the Director erred in applying the preponderance of the evidence standard in adjudicating her case. The Petitioner states that she met the standard because the evidence she provided detailed her extensive experience and success in sustainable waste management and recycling. The Petitioner asserts this met the standard "by demonstrating her significant contributions to environmental sustainability and economic growth." We note that the Petitioner's argument regarding her experience and prior success in waste management is not material to eligibility under *Dhanasar*'s first prong. Rather, her record of success and experience would be relevant under *Dhanasar*'s second prong, whether a petitioner is well-positioned to advance the proposed endeavor.

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." *See Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we provided examples of endeavors that may have national importance having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The Petitioner made similar arguments on appeal as she did in response to the RFE. For instance, the Petitioner states in her RFE response that USCIS "focus[ed] too narrowly on the economic impact and potential job creation aspects." In both briefs submitted on appeal, the Petitioner argues that the Director "too narrowly focused" on the potential economic impact. Yet, the Director correctly

considered the proposed endeavor's prospective potential impact and determined that the Petitioner had not shown that her endeavor had broader implications to the field, or that her endeavor would offer benefits that extend beyond her company. While the Director considered whether the Petitioner demonstrated that her endeavor has a significant potential to employ U.S. workers or has other substantial positive economic effects, the Director did not base her denial solely on that component of the *Dhanasar* analysis.

The Petitioner argues that the Director did not fully consider her endeavor's environmental impact. On appeal, she contends that her endeavor's "potential to improve environmental health" should also be considered in addition to any direct economic impacts. She claims her endeavor meets the national importance standard because it has significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advance of a valuable technology or field of study.

While it is true that "merit may be established without immediate or quantifiable economic impact," the Petitioner has not demonstrated how her endeavor has the significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advance of a valuable technology or field of study. *Matter of Dhanasar*, 26 I&N Dec. at 889. And, the Director found that the Petitioner had not presented evidence that sufficiently demonstrated that her endeavor will broadly enhance societal welfare because the benefits it offers would not extend beyond her company.

Upon review of the record, we agree with the Director that the evidence does not establish the national importance of the Petitioner's proposed endeavor to launch an environmental consulting company.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework related to national importance, 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.