



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 34811430

Date: JAN. 25, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a Quality 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 matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner asserts eligibility and argues that the director applied an incorrect standard of proof in evaluating the evidence provided with her petition. She also argues that her detailed plan for consulting services in quality management as provided in her personnel plan, financial forecast, financial benefits in paying taxes and economic impact in the United States clearly shows the ripple effects of her endeavor will affect the gross domestic product in the United States, tax revenues and employment levels.

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. 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

At the time of filing, the Petitioner indicated her desire to relocate to the United States and continue her work as a quality engineer by working in the management, analysis and implementation of executive projects, legal documentation control, corporate process quality policies, project and target monitoring, and budget development. The Petitioner stated that her proposed endeavor relates to “working as a member of the organization, providing support as Subject Matter Expert (SME) on quality, layout, and engineering methods throughout the life of the project.” She also stated that she “can perform as a consultant developing strategies that focus on the improvement of the American Education System.”

The Petitioner provided details regarding her work history, information about the broader quality engineering industry, and evidence of her past contributions to the quality engineering industry.² This evidence included an expert opinion letter from the chairman of the Manufacturing Engineering Department at [redacted] in Ohio.

The Director issued a request for evidence (RFE) seeking information related to the Petitioner’s specific proposed endeavor, her position to complete that endeavor, and whether, on balance, it would be beneficial to the United States to waive the job offer and labor certification requirements.

In response, the Petitioner provided a brief, business plan and new personal statement regarding the creation of a consulting company to provide quality engineering services to organizations aiming to enhance their quality management practices; articles and documentation about quality management and sustainability; and articles about the role of quality management in small and medium enterprises, construction projects, the military and healthcare. In her personal statement provided in response to the RFE, the Petitioner states that “as stated on her initially submitted personal statement” the Petitioner intends to immigrate to the United States “to develop a Consultancy Service...” The Petitioner cited a statement in her prior personal statement that she will perform as a consultant developing strategies that focus on the improvement of the American Education System to support that the initially proposed endeavor was to develop a Consultancy Service.

The Director determined that the Petitioner clarified her proposed endeavor in the RFE from working in area of quality management to creating a consulting services company and providing a business

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

² While we may not discuss every document submitted, we have reviewed and considered each one.

plan and financial forecasting for the proposed “Consultancy Service.” The Director concluded that the record did not establish the Petitioner’s eligibility for a national interest waiver at the time of filing and determined that while the proposed endeavor has substantial merit, the Petitioner did not establish that the proposed endeavor had national importance. The Director further determined that the Petitioner was well-positioned for the proposed endeavor and that, on balance, the Petitioner had not established it was in the best interest of the United States to waive the job offer and labor certification requirements for EB-2 classification.

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. *Id.* at 889.

The Director determined that the Petitioner’s endeavor to work as a quality engineer consultant has substantial merit but that she did not establish national importance. On appeal, the Petitioner provides a brief asserting eligibility for a national interest waiver. The Petitioner contends that the Director applied the wrong standard of proof and the evidence, if considered under a preponderance standard, does establish the national importance of the Petitioner’s endeavor. The Petitioner, however, does not explain how the Director misapplied the applicable standard of proof in analyzing the evidence of record.

Specifically, the Petitioner claims the record establishes by a preponderance of evidence that the Petitioner’s endeavor to develop a Consultancy Services business will have national importance by providing organizations with access to expert guidance, innovative solutions, and continuous improvement strategies. Thus, the Petitioner’s endeavor would raise the bar for quality assurance and contributing to overall health and stability of the economy because thriving businesses are likely to generate job opportunities and bolstering economic growth and prosperity.

While the Petitioner provides substantial information regarding the quality engineering industry as a whole and the benefits of quality engineering to the economy, she has not demonstrated that her specific consultancy services would have a significant economic impact that would rise to the level of national importance. Neither the opinion letters nor the business plan’s projections concerning the business are supported by probative evidence to demonstrate the credibility of the growth estimates forecasted. A petitioner must support assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. The business plan does not demonstrate that any benefits to the regional or national economy resulting from the Petitioner’s endeavor would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Dhanasar* at 890.

The Petitioner also claims that the Director did not properly consider her industry expert opinion and that her proposed endeavor will optimize resource utilization and sustainability on the question of national importance. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record

or if it is in anyway questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the expert opinion restates large portions of the claims the Petitioner made concerning the national importance of the proposed endeavor, but she does not add sufficient analysis or corroborating details to support the restated claims regarding the Petitioner initial or changed proposed endeavor.

The Petitioner's business plan projects creating eight jobs by year five; it is not clear how a business of the size and scope described will impact and positively affect the region in which these individuals will be located. Although the Petitioner asserts that her company will hire U.S. employees, she has not provided evidence to show that she would employ a significant population of workers in the region, or that her endeavor would offer the region or its population substantial economic benefit through employment levels, business activity, or tax revenue. Neither the business plan nor the remaining evidence in the record demonstrate that the Petitioner's endeavor to continue to provide quality engineering consulting services through operation of a small business rises to the level of national importance. The Petitioner has not demonstrated the national importance of her proposed endeavor under the first prong of the Dhanasar analytical framework.

The Petitioner's broad statements regarding leveraging her work history into a new business that would advance the quality engineering is not sufficient to establish national importance. The first prong of the Dhanasar framework is forward looking, meaning we evaluate the potential future impact of the Petitioner's specific business, scientific, educational, or health related endeavor. In this context, the Petitioner's past record of success in her industry is immaterial to the business she intends to operate. Such considerations are better examined under the second prong of the Dhanasar framework regarding whether the Petitioner is well positioned to advance the proposed endeavor. Here, the Petitioner has not provided the evidence necessary to establish the potential economic impact of her endeavor or that the proposed consultancy services would, in fact, benefit a specific client or clients let alone the quality engineering industry as a whole and reach the level of national importance.

III. CONCLUSION

Because the Petitioner has not established her proposed endeavor is of national importance, she is not eligible for a national interest waiver under the Dhanasar analytical framework. We reserve our opinion regarding whether the evidence of record satisfies the third Dhanasar prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976)(per curiam)(holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.