



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

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

In Re: 36550280

Date: JAN. 29, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, an equestrian and entrepreneur, seeks employment-based second preference (EB-2) immigrant 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 Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner qualified for a national interest waiver. The matter is now before us on appeal. 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).¹ Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual>. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality

¹ If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” *Id.* 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 USCIS may, as matter of discretion,² 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.

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

II. EXCEPTIONAL ABILITY

The Director concluded that the Petitioner did not establish her eligibility under the EB-2 classification as an individual of exceptional ability.³ As discussed below, because the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, we decline to reach and hereby reserve arguments concerning her eligibility under the EB-2 classification. *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. NATIONAL INTEREST WAIVER

The issue to be determined on appeal 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 Petitioner initially stated that she intended to operate an equestrian club in order to “promote equestrian sport in the United States, support its high professional level, and contribute to improving the health of the [U.S.] population and the growth of its cultural component.” Her business plan describes a venue offering training, stabling, rentals for events, and educational programs.

Although the Director determined that the Petitioner’s proposed endeavor has substantial merit, the Director concluded the record did not establish that the endeavor is of national importance. On appeal, the Petitioner reiterates her explanation of the national importance of her endeavor. Upon review, for

² *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 to be discretionary in nature).

³ We note that the Petitioner did not claim—and the record does not demonstrate—that she qualifies for the EB-2 classification as an advanced degree professional.

the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her endeavor in order to establish her eligibility under the first prong of the *Dhanasar* analytical framework.

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. *Dhanasar*, 26 I&N Dec. at 889.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated 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. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. *Id.* at 889.

On appeal, the Petitioner points to letters from two professors as evidence of her eligibility for a national interest waiver. As to the national importance of her endeavor, these letters describe the Petitioner's business plan, the equine industry, and the potential positive impacts of her business in her community, including possible wellness benefits for clients, economic growth, and the expectation that the Petitioner's club could draw national recognition in the field. These letters, however, do not explain how the Petitioner's club would impact the field; the letters rely on the industry's anticipated growing role in the U.S. economy, but they do not indicate how the Petitioner's business employing ten employees would have an impact within an industry that, as one author claims, has an economic impact of \$122 billion in the United States while supporting 1.7 million jobs. These letters, as well as other letters of recommendation, also highlight the Petitioner's qualifications to pursue her proposed endeavor. We note, however, that evidence of the Petitioner's experience and education generally relates not to the national importance of an endeavor, as discussed in the first prong of *Matter of Dhanasar*, but to the second,⁴ which evaluates whether a petitioner is well positioned to advance an endeavor. As such, the letters do not sufficiently demonstrate the national importance of the Petitioner's proposed endeavor.

In addition, the Petitioner has not explained how she would undertake an endeavor of a scale that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. While she anticipates that her business would contribute to an "industry [that] generates \$38 billion in direct wages and salaries," the business plan depicts direct employment for ten individuals throughout the club's first five years of operation and the generation of \$345,280 in payroll expenses

⁴ Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision.

by its fifth year; the Petitioner does not explain how her operation of a small business would have a national impact as one club among thousands in multi-billion-dollar industry. Further, she has not provided a sufficient basis for her business projections, nor are the numbers corroborated by probative evidence sufficient to demonstrate that it is more likely than not that the business will have a substantial positive economic effect within the field. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. She has not done so here.

The Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the nation. Specifically, she has not shown that her business stands to provide substantial economic benefits to any particular locality or to the United States overall. While the record describes an endeavor that intends to contribute to the increased popularity of equestrian sports in the United States, it is not clear how a business of the size and scope described would significantly impact the popularity of the sport in a certain region in which her clients or employees are located. Further, it is not clear that her proposed endeavor would have a potential prospective impact beyond individuals availing themselves of her business's services, nor does the evidence demonstrate that her business has a significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advancement of a valuable technology or field of study.⁵

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *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

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.

⁵ *See* 6 USCIS Policy Manual F.5(D)(1).