



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

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

In Re: 26578639

Date: APR. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a system engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established 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. 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. Next, a petitioner must then demonstrate 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner shows:

- 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.

¹ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

The Director concluded the Petitioner did not qualify as an individual of exceptional ability; however, the Director indicated the Petitioner's eligibility as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided an "Autobiographical Statement" indicating:

I would want nothing more than to become a successful entrepreneur and professional in the United States of America as there is no place like America where dreams of hardworking entrepreneurs come true.

....

I am currently in the process of realizing myself as a DevOps engineer. I am studying to get all the necessary certificates to start my career in the United States.

It is worth mentioning because of me being an Au-Pair for one and a half years I would like to open my own business with services providing support to kids. I would like to open a place where children can immerse themselves in another world and pass different quests and tasks to develop their logical skills using immersive technology. This place will be designed to acquire the necessary skills so that children can explore the world around them without causing any injuries to themselves or others. I would like to implement this with the help of augmented and virtual reality technologies. The main task of this project is to get the necessary life skills in the game format.

My education and professional experience have uniquely prepared me for a continuation of my very successful DevOps career in the United States. I would love nothing more than to contribute my talent, experience, and ability as a Systems Engineer to the benefit of the United States of America

In response to the Director's request for evidence (RFE), the Petitioner submitted a business plan for reflecting :

is a standard tech-educational company located at FL, USA. As an exemplary software department, we are well-positioned to provide software which uses to create labs such as: chemistry, physics and all scientific programs using Virtual and Augmented reality. This software will help students learn science with much enthusiasm without damaging their health. The main point of this idea is to make education in the US easier and better irrespective of the quality of teachers the school has.

The Director determined the Petitioner demonstrated the proposed endeavor’s substantial merit but not its national importance. On appeal, the Petitioner claims she “has proposed an endeavor of a technology Company that will create jobs for the US economy.” For the reasons discussed below, the Petitioner has not sufficiently shown the national importance aspect of her proposed endeavor.

At the outset, the Petitioner stresses her “education and professional experience.” The Petitioner’s education, experience, and abilities in her field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*’s first prong.

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 specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner provided evidence relating to the science, technology, engineering, and mathematics (STEM) fields; occupational outlook for computer systems analysts; employment shortages; and the immigration impact of the labor force. Here, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of owning and operating a tech-educational company rather than the importance of STEM, labor shortages, or immigration. In *Dhanasar*, we 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.

With respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance.² Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance.³ On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance.⁴ Thus, simply pursuing an endeavor in a STEM field does not automatically demonstrate eligibility for a national interest waiver. In this case, the Petitioner does not intend to advance STEM technologies and research. Rather, the Petitioner seeks to own and operate a tech-educational company “to help students most especially in public schools learn natural sciences effectively.”

Moreover, 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. The business plan does not offer specific information demonstrating the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined the petitioner’s

² See generally 6 USCIS Policy Manual F.5(D)(2), <https://uscis.gov/policymanual>.

³ *Id.*

⁴ *Id.*

teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the business plan contains vague, general assertions without showing how her owning and operating [] stand to sufficiently extend beyond her prospective students, to impact the education industry or the U.S. economy more broadly at a level commensurate with national importance. Without specific, detailed information, the Petitioner did not establish the “potential prospective impact” of her endeavor.

Likewise, the Petitioner did not show her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The business plan does not assert any potential job creation or revenues. The Petitioner did not demonstrate her company would employ a significant population or workers in the [] Florida area or her endeavor would offer the region or its population a substantial economic benefit through such employment levels or business activity. Without evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not reflect any benefits to the U.S. regional or national economy would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.⁵

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated eligibility for or otherwise merits 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.

⁵ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that “courts and agencies are not required to make findings on issues in 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).