



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

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

In Re: 27773620

Date: AUG. 1, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a customer service provider and manager, 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 Nebraska 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

As it relates to the national interest waiver, 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” indicting:

My professional activity as a Customer Service Provider & Manager has substantial merit and national importance for the U.S. because due to my unique background, I possess in-depth knowledge and experience in a broad range of areas customer service and management

. . . .

Thus, it is extremely important for the United States to utilize the best experience in the field of customer service and management in order to safely maintain the pace of its economic development and its status as the leader of the developed world.

As demonstrated by my resume, history of a very successful professional career as a Customer Service Provider & Manager, educational credentials, and recommendation letters, I am strongly qualified to contribute my knowledge and expertise as a Customer Service Provider & Manager, to extremely complex and specialized projects. In addition to that, due to my natural analytical talents and a deep understanding of the customer service and hospitality markets, as well as my professional background in business strategy, I am uniquely positioned to help American companies during a very challenging time, including companies who want to expand into Kazakhstan.

In response to the Director’s request for evidence (RFE), the Petitioner claimed she “intends to work in the Boutique Hotel Industry” and submitted a business plan for “[redacted]” which would be located in [redacted] New York. The Director determined the Petitioner demonstrated the proposed endeavor’s substantial merit but not its national importance. On appeal, the Petitioner maintains that she “seeks to revive the hotel industry as it struggles to recover from the pandemic, by providing high quality experiences to customers and training others to do the same, and this would help increase consumer confidence and assist the hotel industry more broadly.”

As indicated, the Petitioner initially claimed she intended to work in customer service and management. However, in response to the Director’s RFE, the Petitioner asserted for the first time that she intended to open and operate her own hotel, [redacted]. The Petitioner must establish all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. Accordingly, we will not consider the Petitioner’s materially changed proposed endeavor of opening and operating her own business.

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. Although she provided evidence relating to the customer service position, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her particular customer service and management services rather than the importance of the occupation or the industry or field. 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. We also note here the Petitioner also contends the need for customer service positions in the United States. However, the alleged shortage of an occupation does not render her proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner emphasizes her “unique background.” The Petitioner’s experience, skills, 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 she proposes to undertake has national importance under *Dhanasar*’s first prong.

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 Petitioner did not offer specific information and evidence to corroborate her assertions that the prospective impact of working as a customer service provider and manager for an unidentified employer rises to the level of national importance. In *Dhanasar*, we determined the petitioner’s 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 record does not show through supporting documentation how her specific employment services stand to sufficiently extend beyond her prospective employer(s), to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not show that her initial proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show any benefits to the U.S. regional or national economy resulting from her customer service provider and manager position 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.²

² *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings”

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude 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.

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 alternate issues on appeal where an applicant is otherwise ineligible).