



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

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

In Re: 26385963

Date: MAY 4, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a legal consultant, 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 Texas Service Center denied the petition, concluding that the Petitioner did not qualify for the classification as a professional holding an advanced degree, nor had the Petitioner established that 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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. 8 C.F.R. § 204.5(k)(2).

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." 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 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.²

II. ANALYSIS

A. Eligibility as a Member of the Professions Holding an Advanced Degree

To establish eligibility for this classification as a member of the professions holding an advanced degree, a petitioner must submit an official academic record of an advanced degree or an official academic record of a baccalaureate degree along with letters from current or former employers; these letters must establish that the petitioner has at least five years of progressive post-baccalaureate experience in the specialty for which the petitioner has requested classification. *See* 8 C.F.R. § 204.5(k)(3)(i).

The Petitioner initially asserted that she qualifies for the EB-2 classification based on her foreign bachelor's degree in law from Brazil and more than five years of post-baccalaureate experience in the specialty. In denying the petition, the Director determined that the Petitioner had not shown that she has sufficient post-baccalaureate work experience to demonstrate her attainment of an advanced degree. The Director interpreted evidence relating to the Petitioner's education in Brazil to show that she obtained the foreign equivalent of a baccalaureate degree in 2015, and therefore determined that her work experience, which was documented into 2019, totaled fewer than five years. On appeal, the Petitioner clarifies that her 2015 degree was for post-graduate coursework in law and that she obtained her bachelor's degree in law in 2012. Review of the Petitioner's degrees, transcripts, and an academic evaluation demonstrate her receipt of a foreign equivalent of a bachelor's degree in law in 2012, and letters from previous employers show that she worked in relevant progressive positions for more than five years following 2012. We conclude that the Petitioner is a member of the professions holding an advanced degree.

B. National Interest Waiver

The remaining issue to be determined 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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor 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

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).

² *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

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.

The Petitioner intends to work in the United States as a legal consultant for her own consultancy company in Florida. In response to a request for evidence (RFE), she described the following in clarifying her endeavor:

[The petitioner] endeavors to support the sustainable growth of the U.S. economy by supporting domestic clients, especially small and medium sized enterprises, to implement internationalization strategies and start to export their products and services. Furthermore, [the Petitioner] is qualified to help U.S. companies better negotiate and navigate the current political turmoil and economic difficulties in Brazil through her vast knowledge of the business environment and legal landscape. The Company's consultancy will encompass a wide range of advisory services, with its main focus being on the various business, tax and contractual law norms practiced in Brazil....

[The Petitioner] will establish her company in the state of Florida, an SBA HUBZone area that will help to fuel small business growth in historically underutilized business zones....generating jobs for U.S. workers in these underutilized areas, improving the wages and working conditions for the U.S. workers, and helping the local community bring investments to the region.

The Director determined that, while the Petitioner's endeavor has substantial merit, she did not demonstrate that it has national importance. The Petitioner submitted several industry reports on the outlook of the legal profession, international trade and investment, and trade with Latin America, as well as a business plan; the Director concluded that the evidence did not establish how her endeavor rises to the level of national importance, nor did it demonstrate the potential prospective impact of her continued work or how it would have broader implications in the field of business and law.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. 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.

On appeal, the Petitioner submits a brief in which asserts that, rather than applying the governing standard of review, preponderance of the evidence,³ the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law." The

³ *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

Petitioner, however, does not elaborate on these assertions; she reiterates her eligibility based on the record in a manner that closely resembles her RFE response letter. In addition to the description of her intentions above, like the RFE, her brief includes the following statements concerning the intent of her company:

Here, she will continue to work on nationally important projects, as well as contribute to cross-border activities between the U.S. and Latin America with emphasis on Brazil.... She will generate confidence in the U.S. market, thus attracting foreign investors and helping them navigate the U.S. business environment....

She is an expert in an area of work that can generate substantial and concreted benefits to large scale business transactions and foreign relations between the United States and Latin America....

[The Petitioner] is able to attract a large sum of foreign companies and individual investors looking to expand their business portfolios, which will increase FDI [foreign direct investments] in the U.S.

[The Petitioner's] proposed endeavor impacts the national economy, thus serving nationally important matters, explicitly by...providing business advisory services to distinctive foreign companies and foreign investors looking to expand their businesses, and wealth, into the U.S. market....

The Petitioner has stated that she will establish her business in a HUBZone. The goal of the Small Business Administration's HUBZone Program⁴ is to fuel small business growth in economically depressed geographic areas. While the Petitioner states that her company intends to focus on small and medium sized businesses in these areas, the above statements appear at odds with that intention; it is not clear what initiative investors looking to expand their wealth would have to invest in small businesses in economically depressed areas, nor is it clear how the Petitioner would incentivize them to do so. These statements are generalized and not supported in the record by a specific plan to generate investments; her stated intentions appear to rely on her "extensive experience, knowledge, and contacts"—the latter of which is not documented by evidence in the record. Also not documented is whether the area in which the Petitioner intends to operate her business is economically depressed.

In addition, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. The Petitioner has submitted a business plan that anticipates the creation of eight direct jobs within her company, and she uses an input-output modeling system developed by the Bureau of Economic Analysis to calculate an economic impact equivalent to 139 additional indirect jobs at her company's fifth year of operation. The financial forecast data, however, does not appear to have any basis; absent a specific plan to generate investments, it is not evident that her company will generate revenue to create any jobs. And while the business plan promises growth beyond the region in which the company will operate in Florida, it does not describe how the company anticipates this expansion's development. Without sufficient information or evidence regarding any projected U.S.

⁴ See <https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program>.

economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

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. While the Petitioner's statements reflect her intention to provide consultancy services for her business clients, she has not provided sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that 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, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her company and its clientele to impact the legal consulting field or the U.S. economy more broadly at a level commensurate with national importance.

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 basis for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework.⁵

III. CONCLUSION

The Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers, to impact an economically depressed region, or to otherwise offer substantial positive economic effects for the United States. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not established 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 *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); 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).