



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 28450757

Date: SEP. 06, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing manager and entrepreneur, 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). 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. The Director concluded that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate her eligibility for the requested 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest."

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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 discretion², 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.

II. ANALYSIS

The Petitioner proposes to establish a digital marketing consulting and advertising agency business in Florida. She earned the title of professional in marketing and advertising from [redacted] Universitaria [redacted] in Colombia and subsequently worked in sales and marketing. The Director determined that the Petitioner established her eligibility as a member of the professions holding an advanced degree.³

However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar prong. The Director further found that the Petitioner did not establish that she is well positioned to advance the proposed endeavor, and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. Upon de novo review, we agree with the Director’s determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.⁴

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 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.” Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner proposes to establish a digital marketing consulting and advertising agency business for which she would manage the business and be its marketing manager. The Petitioner indicates that the business would provide its services to small to medium-sized businesses across Florida and the United States, specifically food and beverage companies in the hospitality industry. Its services will

² 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).

³ To demonstrate she is an advanced degree professional, the Petitioner submitted her academic certificate and transcripts from [redacted] an academic evaluation; and letters from her previous employers and colleagues. The record demonstrates that she holds the foreign equivalent of a U.S. bachelor’s degree in marketing and at least five years of progressive experience in her specialty. See 8 C.F.R. § 204.5(k)(3).

⁴ While we may not discuss every document submitted, we have reviewed and considered each one.

include digital content creation, design and administration of websites, social media management and creation, digital traffic strategies, and marketing models. We agree with the Director that the Petitioner's endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the record did not establish that her proposed endeavor has the potential to extend beyond her business and her clients "at a level sufficient to demonstrate the national importance of her endeavor." Therefore, the Director found that the Petitioner "has not established the national importance of her proposed endeavor and therefore she does not meet the first prong of the *Dhanasar* framework."

The Petitioner contends on appeal that the Director "did not apply the proper standard of proof . . . , instead imposing a stricter standard, and erroneously applied the law" (emphasis omitted). The Petitioner further argues that the Director "did not give due regard" to the evidence submitted, specifically the Petitioner's resume, her business plan, letters of recommendation, and industry reports and articles. Upon de novo review, we find the record does not demonstrate that the Petitioner's proposed endeavor satisfies the national importance element of *Dhanasar*'s first prong, as discussed below.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

On appeal, the Petitioner argues that her proposed endeavor has national importance, particularly because it will "generate substantial ripple effects upon key marketing activities on behalf of the United States" and would be "a vital aspect of U.S. marketing operations and productivity - which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy." (emphasis omitted). The Petitioner stresses her more than 15 years "of progressive experience and acumen in the marketing field" (emphasis omitted) and her educational credentials to argue that her "work offers broad implications to the United States' marketing industry, specifically through her endeavors within key commercial segments." (emphasis omitted).

The Petitioner further argues her proposed endeavor will benefit the United States "by creating jobs and economic stability." She relies on her professional background to emphasize that she "has brought numerous advantages to the organizations she has served . . ." by stimulating "her served companies' economic capacities" and prioritizing "customer satisfaction by ensuring all projects are aligned with customer's actual needs, furthering customer loyalty." The Petitioner argues the United States "would benefit from investing in well-versed marketing professionals such as [the Petitioner], who are knowledgeable regarding potentially profitable markets for U.S. companies in regions that are economically and politically strategic, yet extremely complex." (emphasis omitted). She contends her "proposed endeavor will have multiple positive effects on the U.S. marketplace, thus enhancing business operations on behalf of the nation, and contributing to a streamlined economic landscape." The Petitioner asserts her "proposed endeavor is clearly of national importance, when considering

how much a professional with her caliber can contribute to the national interests, and to the U.S. economy, regardless of a labor certification.” (emphasis omitted).

However, the Petitioner’s reliance on her academic credentials, professional experience, and achievements to establish the national importance of her proposed endeavor is misplaced. Her academic credentials, professional experience, and achievements relate to the second prong of the Dhanasar framework, which “shifts the focus from the proposed endeavor to the foreign national.” Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar’s first prong. 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. See *id.* at 889.

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 the field more broadly. *Id.* at 893. The record does not demonstrate that the Petitioner’s proposed endeavor will substantially benefit the field of marketing, as contemplated by Dhanasar: “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *Id.* The evidence does not suggest that the Petitioner’s digital marketing consulting and advertising agency business would impact the marketing field more broadly.

With the petition, the Petitioner submitted her statement and a business plan which indicate her proposed endeavor has national importance based on potential economic benefits. The business plan briefly explains that its office will be in an underutilized business zone in Florida. She asserts her business would generate jobs for U.S. workers in this underutilized business community, improve wages and working conditions for U.S. citizens, and increase investment and economic development in local communities.

However, the Petitioner has not provided corroborating evidence to support her claims that her business’ activities stand to provide substantial economic benefits to the underutilized area of Florida or the United States. The Petitioner’s claims that her digital marketing consulting and advertising agency business will benefit the Florida or U.S. economy have not been established through independent and objective evidence. The Petitioner’s statements are not sufficient to demonstrate her endeavor has the potential to provide economic benefits to the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that her proposed job duties as the owner and marketing manager of her business would impact the marketing industry more broadly, rather than benefiting her business and her proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

The business plan also explains the business’ services; its market opportunities targeting small and medium-sized food and beverage businesses in the hospitality industry; an analysis of the marketing industry; and the business’ proposed marketing, staffing, and financial forecasts. The business plan briefly indicates that it proposes to establish the business in an underutilized business zone, claiming this will generate jobs for U.S. workers in these underutilized areas, will improve the wages and working conditions for U.S. workers, and will improve the safety and life quality of U.S. citizens.

However, the record does not sufficiently document the potential prospective impact, including the asserted economic benefits to Florida and the United States.

The business plan projects that in five years the business will hire seven direct employees, pay wages of over \$360,000, and generate \$68,193 in payroll taxes and benefits. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner has not provided corroborating evidence demonstrating that her business' future staffing levels and business activities stand to provide substantial economic benefits to Florida and the United States. While the Petitioner expresses her desire to contribute to the United States and its underutilized business areas, she has not established with specific, probative evidence that her endeavor will have broader implications in her field, will have significant potential to employ U.S. workers, or will have other substantial positive economic effects in an economically underutilized area of Florida. The Petitioner must support her assertions with relevant, probative, and credible evidence. See *id.* Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating seven direct jobs, paying wages of over \$360,000, and generating taxes and benefits of \$68,193 over a five-year period rises to the level of national importance.

The Petitioner further claims on appeal that the national importance of her proposed endeavor is evidenced in industry reports and articles. She argues that the reports and articles demonstrate the “steep shortage in the [United States] of professionals with her profile in the field.” The record includes industry reports and articles relating to the importance of marketing to the growth of businesses; marketing consultants; consumer spending trends; the importance of improving customer experience in marketing; how marketers regain consumer trust; the economic benefits of foreign direct investment and international trade; and the economic benefits of immigrants and entrepreneurship. We recognize the importance of the marketing industry and related careers, and the significant contributions from immigrants who have become successful entrepreneurs; however, merely working in the marketing field or starting a digital marketing consulting and advertising agency business is insufficient to establish the national importance of the proposed endeavor. Instead, of focusing on the importance of an industry or the need for workers in a specific industry, 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 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. The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner’s proposed endeavor.

We note that the record includes an expert opinion from [redacted] adjunct associate professor of marketing and management at [redacted] University in New York. The opinion includes an analysis of the national importance of the Petitioner’s proposed endeavor stating, “[The Petitioner] would work in the United States in an area of substantial merit and national importance.” (emphasis omitted). The opinion explains the expected growth of job opportunities in the digital advertising and marketing field, including sales managers, promotions, and marketing managers. However, the

opinion's focus on the need for marketing and sales managers for the digital advertising and marketing industry does not demonstrate that the Petitioner's specific endeavor may have a prospective impact in her field. The opinion does not focus on the Petitioner's specific endeavor and it having a potential prospective impact on the U.S. economy, or in the field of her proposed endeavor. Simply stating that her work would support an important industry is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The opinion also explains that companies doing or planning to do business abroad in Latin America would benefit from the Petitioner's expertise stating, "The merit and importance of her work . . . is even greater, given the increase in global business and trade. U.S. companies trading abroad will benefit from her expertise and in-depth knowledge of commerce in Colombia." However, the opinion does not consider the Petitioner's proposed digital marketing consulting and advertising agency business. The record does not indicate that the Petitioner's proposed endeavor includes collaborative works between U.S. companies and Latin America companies, or that she is actively targeting U.S. companies that do business, or plan to do business in Latin America or Colombia. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. See *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988); see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). The content of the opinion is lacking relevance because it discusses how the Petitioner's expertise would be beneficial to U.S. companies doing business in Latin America and Colombia; instead of addressing how the specific proposed endeavor would satisfy the national importance element of the first prong of the Dhanasar framework.

The Petitioner does not demonstrate that her proposed endeavor extends beyond her business and her future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as the owner and marketing manager of her proposed digital marketing consulting and advertising agency business offers original innovations that contribute to advancements in her industry or otherwise has broader implications for her field. The economic benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed business' digital marketing consulting and advertising work and the claimed economic results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility under the second and third prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.