



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 28453507

Date: SEP. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an architectural designer 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 the record did not demonstrate his 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. 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." 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<sup>1</sup>, 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 an architecture and interior design business in the United States having previously worked as an architectural designer in Brazil.

### A. Member of Professions Holding an Advanced Degree

The Director did not make a determination as to the Petitioner's eligibility for the EB-2 classification. For the reasons discussed below, the Petitioner has not established her eligibility for EB-2 classification.

The Petitioner submitted evidence to qualify as a member of the professions holding an advanced degree. To qualify as a member of the professions, an individual must meet "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. 204.5(k)(2).<sup>2</sup> The record does not establish that the Petitioner's occupation as an architectural designer, requires the minimum of a U.S. bachelor's degree or its foreign equivalent for entry into the occupation. The Petitioner maintains that her prospective architectural designer position comports with the duties and responsibilities of those employed in the "Architectural and Civil Drafters" SOC Code 17-3011 occupation. The U.S. Department of Labor states that the education requirements for this occupation are "training in vocational schools, related on-the-job experience, or an associate's degree." See U.S. Department of Labor, O\*NET Summary Report for "Architectural and Civil Drafters," <https://www.onetonline.org/link/summary/17-3011.00>. Since a U.S. bachelor's degree or its foreign equivalent is not the minimum requirement for entry into the Petitioner's intended occupation of architectural designer, she has not established that she qualifies as a member of the professions. 8 C.F.R. 204.5(k)(2).

Additionally, the record does not establish that the Petitioner has at least a U.S. bachelor's degree or a foreign equivalent degree. The Petitioner earned a title of urbanist architect from Universidade de [REDACTED] in Brazil on August 29, 2014, and a certificate for the completion of a graduate program in interior design from Universidade [REDACTED] in Brazil on March 12, 2019. She has also worked as an architectural designer in Brazil and in the United States. The Petitioner submitted copies of her certificate and degree, the respective academic transcripts, work experience letters, and an academic evaluation from Morningside Evaluations and Consulting dated October 12, 2022. The academic evaluation states, "On the basis of the credibility of Universidade [REDACTED] the

<sup>1</sup> 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).

<sup>2</sup> Section 101 (a)(32) of the Act states "[t]he term 'profession' shall include but not limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

Universidade [redacted] and the hours of academic coursework, it is the judgment of Morningside Evaluations and Consulting that [the Petitioner] has attained the equivalent of a Bachelor of Science in Architecture from an accredited institution of higher education in the United States.” (emphasis omitted).

The plain language of the regulations indicates that an advanced degree equivalency must include a single bachelor’s degree, without substituting experience for education or combining lesser educational credentials. The regulations require five years of progressive experience to follow “[a] United States baccalaureate degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(2).<sup>3</sup> Here, the evaluation combines the Petitioner’s educational credentials, her title of urbanist architect and her certificate in interior design, to be the foreign equivalent of a single U.S. bachelor’s degree. The Petitioner’s combined educational credentials do not qualify under the regulations as the foreign equivalent of a single U.S. bachelor’s degree.<sup>4</sup>

Since the record does not show that the Petitioner qualifies as a member of the professions or that she holds a U.S. baccalaureate degree or foreign equivalent degree, the Petitioner has not established that she is eligible to be classified as a member of the professions possessing an advanced degree.

#### B. National Interest Waiver

The Director determined that 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.<sup>5</sup>

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,

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<sup>3</sup> When introducing the EB-2 regulations, the former Immigration and Naturalization Service (INS) explained that “the proposed rule does not provide a procedure to allow experience alone to substitute for either a baccalaureate degree or an advanced degree.” Proposed Rule on Employment-Based Petitions, 56 Fed. Reg. 30703, 30706 (July 15, 1991). In response to stakeholder input, the INS reviewed the Immigration Act of 1990 and found the proposed regulations consistent with Congressional intent. The INS stated, “[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, an alien must have at least a bachelor’s degree.” INS Final Rule on Employment-Based Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added). Thus, an advanced degree professional must have at least a U.S. bachelor’s degree or a single foreign degree equivalent.

<sup>4</sup> We note that even if the Petitioner’s educational credentials qualified under the regulations as the foreign equivalent of a U.S. bachelor’s degree, the Petitioner would not qualify as having at least five years of progressive post-baccalaureate experience. 8 C.F.R. § 204.5(k)(2). The Petitioner’s certificate in interior design was earned in March 2019, and this Form I-140 petition was filed approximately two years afterwards in July 2021. Therefore, the Petitioner could not have had at least five years of post-baccalaureate experience at the time of filing this petition.

<sup>5</sup> While we may not discuss every document submitted, we have reviewed and considered each one.

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 an architecture and interior design business for which she would be its company manager and an architectural designer. The business plan states that the Petitioner’s business would “focus on delivering affordable high-standard architecture and interior design projects.” The business would harness “the evolution of the perception and utilization of interior spaces fostered by new living/working arrangements consequence of the post-COVID-19 Coronavirus Pandemic.” (emphasis omitted). We agree with the Director that the Petitioner’s endeavor has substantial merit.

With respect to the national importance of the proposed endeavor, the Director stated, “The prospective potential impact of her proposed endeavor has not been shown to have broader implications to the overall field to establish its national importance.” The Director further stated, “[T]he Petitioner has not shown that her level of employment will have the potential to provide substantial positive economic effects to the region her [sic] business is located or to the nation.” Therefore, the Director found that Petitioner did not meet her burden in establishing the national importance element of the first prong of the *Dhanasar* framework.

The Petitioner contends on appeal that the Director “imposed novel substantive and evidentiary requirements beyond those set forth in the regulations.” The Petitioner argues that the Director did not apply the proper preponderance of the evidence standard of proof, instead imposing a stricter standard. The Petitioner further argues that the Director erred by not giving “due regard” to the evidence submitted, specifically: the Petitioner’s resume showing her experience; her business plan showing her experience, credentials, accomplishments, and projections of the benefits offered to the United States; her work in the field to show her contributions in her field; 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.

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 business activities on behalf of the United States - namely, serving their business development and business functions of U.S. companies.” She argues that her “skills have proven to be of significant importance by influencing commercial markets, facilitating foreign investment activities, and contributing to the business and engineering sectors in the [United States].”

The Petitioner stresses her academic record and career experience to show she provides “innovative architectural solutions for clients” and works “on projects that have a significant socioeconomic impact.” 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.

With the petition, the Petitioner submitted a business plan contending her proposed endeavor has national importance based on potential economic and societal benefits. The business’ main product would be interior renovation and decorating for residential and commercial projects. The main target clients would be “mid- to low-income segments whose living arrangements have suddenly been altered by the pandemic,” with a secondary focus “targeting commercial projects, office interior design, and the design industry directly connected with the real estate market, especially the vacation/short-term rentals . . . .” The business would focus on offering functional and elegant project planning at affordable prices, generate jobs for U.S. workers, establish an office in an underutilized business community of [REDACTED] focus on sustainable projects which are environmentally responsible, and share knowledge of sustainable projects with high school students.

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. The record does not demonstrate that the Petitioner’s proposed endeavor will substantially benefit the field of architectural design, 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 architecture and interior design business would impact the architectural design field more broadly.

The record does not demonstrate that the proposed endeavor would provide economic or societal benefits that rise to the level of national importance. The business plan explains that its main office would be in the underutilized business community of [REDACTED] so that it can “create jobs in a region where they are mostly needed.” However, the plan also explains that it would serve Florida communities outside of the [REDACTED] area, including [REDACTED] and then later expand to Texas and California. The business plan projects that in five years the business will hire eight full-time employees and approximately seven part-time employees; pay over 1.8 million dollars in payroll and taxes; and generate almost five million dollars in revenue. 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 to support her claims that her business’ future staffing levels and business activities stand to provide substantial economic and societal benefits to an underutilized area of [REDACTED] Florida and the United States. The Petitioner’s claims that her architecture and interior design business will benefit the U.S. economy and enhance societal welfare

has 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 and societal 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.

The Petitioner expresses her desire to work with sustainable projects in order to be environmentally responsible, and to contribute economically to the United States and an underutilized business area of [redacted] Florida. However, 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 and societal effects to Florida or the United States. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 15 direct jobs and paying wages and tax revenue of 1.8 million dollars over a five-year period rises to the level of national importance. Also, without sufficient documentary evidence that her proposed job duties as the company manager and architecture designer for her business would impact the architectural design 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 Petitioner further claims on appeal that the national importance of her proposed endeavor is evidenced in industry reports and articles. The Petitioner stresses on appeal the articles and reports relating to the economic benefits of immigrants in the U.S. workforce, immigrant entrepreneurs, and foreign direct investment in the United States. The record also includes articles and reports relating to real estate investment; the shortage of affordable homes; the construction industry; the U.S. infrastructure; business in Brazil; the status of science, technology, engineering, and math; trade and globalization; and engineering and its economic growth. We recognize the importance of foreign direct investments and the real estate market, and the significant contributions from immigrants who have become successful entrepreneurs. However, working with real estate as an architectural designer and starting an architecture and interior design business are insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Matter of 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, job creation, or societal benefits specifically attributable to the Petitioner's proposed endeavor.

The record includes the Petitioner's resume and recommendation letters from former clients. The letters mainly discuss the Petitioner's work experience on client projects and her knowledge and professionalism as an architectural designer. The letters convey her architectural expertise and the importance of her work to specific projects. However, these documents relate to the second prong of the Dhanasar framework. See Id. We acknowledge that the Petitioner provided architectural design services for her clients in the past. However, the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of her proposed

endeavor will rise to the level of national importance, rather than only impacting her clients. The letters do not demonstrate that the Petitioner's work will have national or global implications in the field of architectural design.

The Petitioner does not demonstrate that her proposed endeavor extends beyond her business and her future clients to impact the field of architectural design 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 company manager and architectural designer of her proposed architecture and interior design business offers original innovations that contribute to advancements in her industry or otherwise has broader implications for her field. The economic and societal benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed business' architecture and interior design work and the claimed economic and societal 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 record does not establish that the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree, or that she has met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner is not eligible 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.