



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 27740889

Date: SEP. 13, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a health education specialist, 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 Nebraska Service Center denied the petition. The Director concluded that the record did not demonstrate the Petitioner's 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." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the

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.

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 work as a health education specialist and as the chief financial officer for her new health and safety solutions business, [REDACTED] in Florida. She earned the title of license in physical education from [REDACTED] in Brazil and subsequently worked in education and in human resources for health and ergonomics. 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 initially submitted a professional plan and statement with her Form I-140 petition indicating that she intended to work as a health education specialist “within the school and corporate setting” and focusing “to improve the health conditions of the population as a whole, a job that consists of raising awareness about the risks regarding lack of physical activity.” The Petitioner further stated,

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. The record demonstrates that she holds the foreign equivalent of a U.S. bachelor’s degree in physical education 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.

“I also intend to develop a U.S. business . . . through which I will provide physical, corporate, and social education in health matters for a large variety of clients and employers, thereby impacting workplace safety and wellness in a diverse range of industry areas.” Her Counsel’s letter stated that the Petitioner planned “to contribute her services as a Health Education Specialist through multiple avenues, including through direct employment in educational settings, consultancy roles, and her own U.S. business” Counsel further indicated that the Petitioner would “provide physical, corporate, and social education in health initiatives for a large variety of clients and employers, thereby impacting workplace safety and wellness in a diverse range of industry areas.”

The Director issued a request for evidence notice explaining the Petitioner’s description of her proposed endeavor was vague since it proposed different types of work and needed to be more specific to determine its national importance. In response, the Petitioner submitted a definitive statement and a business plan stating her intention “to develop a health [sic] and safety solutions company, [REDACTED] [REDACTED] that provides services to improve working conditions, prevent labor [sic] injuries, avoid liabilities and reduce worker compensation premiums.” She explained she would be a health education specialist and chief financial officer for her business. The business would provide health, safety, and environment consulting and training services focused on workplace safety; workplace ergonomic reports and assessments; and guidance for physical activities in the workplace. Her business would help prevent “work-related injuries by investing in safety and training centers in economically depressed areas, which will also provide an opportunity to youth professionals with low experience.” We agree with the Director that the Petitioner’s proposed endeavor described in the documentation submitted with her reply to the request for evidence has substantial merit.

However, the Director found that the record did not establish her proposed endeavor has the potential to extend beyond her business and her clients “to impact her field of endeavor at a level sufficient commensurate with national importance.” Therefore, the Director found that the Petitioner did not establish the national importance of her proposed endeavor, and she did 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 business plan, definitive statement, 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 education activities on behalf of the United States” and would be “a vital aspect of U.S. school 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 27 years “of progressive experience and acumen in the health education field” (emphasis omitted) and her educational credentials to argue that her “work offers broad implications to the United States’ education 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 clients are aligned with their actual needs, furthering customer loyalty.” The Petitioner argues the United States “would benefit from investing in well-versed education professionals such as [the Petitioner], who are knowledgeable regarding potentially profitable markets for U.S. environmentally friendly organizations 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 health education, 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 workplace health and safety solutions business would impact the health education 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 and health benefits. The business plan explains that the business’ office will be in a historically underutilized and undeveloped business zone of south Florida with “an aggressive expansion plan to achieve national presence” within the first five years of business. The business “will also invest in safety and training centers in

economically depressed areas, being an opportunity for youth professionals with low experience.” She asserts her business would provide economic benefits to the United States by generating taxes, creating jobs for U.S. workers in underutilized business communities, improving wages and working conditions of U.S. workers, and encouraging development in an underutilized business community. She further asserts that her business will have a significant impact on the health of the U.S. workforce by implementing preventative measures that will reduce work related injuries. The prevention of worker injuries will help businesses and the United States by decreasing medical costs, worker compensation claims, and lost wages.

The business plan also explains the Petitioner’s financial investment in the business; the business’ services; the market for health, safety, and environment consulting and training services; the economic and social burden of occupational injuries; economically depressed communities, including south Florida; the business’ marketing strategy, including its competitors and its intent to target clients that have headquarters in Brazil and operations in the United States; and the business’ proposed marketing, staffing, and financial forecasts.

However, the Petitioner has not provided corroborating evidence to support her claims that her business’ activities stand to provide substantial economic and health benefits to Florida or the United States. The Petitioner’s claims that her workplace health and safety solutions business will benefit the Florida and 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 or health benefits to Florida or 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, chief financial officer, and health education specialist of her business would impact the health education 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 projects that in five years the business will hire 78 direct employees, pay wages of over 14 million dollars, create indirect jobs, and generate over 1.7 million dollars 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 business area of Florida or in the United States. 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 78 direct jobs, paying wages of over 14 million dollars, and generating taxes of over 1.7 million dollars over a five-year period rises to the level of national importance.

The Petitioner further claims that the national importance of her proposed endeavor is evidenced in industry reports and articles. The record includes reports and articles relating to global healthcare; the private sector supporting COVID-19 response in Africa; worksite assessments and compliance with occupational standards during COVID-19; physical activity and dietary behaviors of youth; health workforce projections; medical research and innovation; and economic effects of immigrant entrepreneurs.

We recognize the importance of the health education industry, workplace health and safety, and related careers; however, working in the health education field or starting a workplace health and safety solutions 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 *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 healthcare benefits specifically attributable to the Petitioner’s proposed endeavor.

To further support the national importance of her proposed endeavor, the record includes an expert opinion from [REDACTED] professor for the nursing department at The [REDACTED] Institute in New York. The opinion, however, focuses on the Petitioner’s work being “in an area of substantial merit and national importance.” (emphasis omitted). It describes how several research studies support the “importance of physical activities of students in a school and in the work environment.” The opinion explains the philosophy and history of physical education to show its importance. Instead of focusing on the Petitioner’s specific proposed endeavor having a prospective impact in the field of health education, the opinion focuses on the importance of physical education and how the Petitioner’s experience as a physical educator in human resources would be beneficial to the United States.

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 and healthcare 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, chief financial officer, and health education specialist of her proposed business offers original innovations that contribute to advancements in her industry or otherwise has broader implications for her field. The economic and healthcare benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed business’ workplace health and safety solutions work and the claimed economic and healthcare 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.