



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

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

In Re: 27693934

Date: AUG. 16, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a business operation specialist, seeks 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. 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, concluding that the record did not establish that the Petitioner qualifies for the 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 qualify for a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates EB-2 eligibility, 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:

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).

- 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 Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree, but that the Petitioner had not satisfied any of the *Dhanasar* requirements except substantial merit. Therefore, the issue before us 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.

The Petitioner earned a bachelor's degree in tourism management in Brazil in 2000. From that time, she worked in "Revenue Management/Pricing" for various employers, most of them commercial airlines in Brazil, until she entered the United States in November 2020 as a B-2 nonimmigrant visitor. After she filed the petition and obtained employment authorization, she began "working as an Office Manager at . . . a Florida-based company specializing in the installation of fiber optic cables."

The Petitioner stated that her "proposed endeavor is to work as a Revenue Management or Pricing Analyst in the . . . tourism, airline, hotel, or entertainment industry." The Petitioner provided background information about her occupation and about the aviation and hospitality industries.

After the Director requested more information about the proposed endeavor, the Petitioner stated that she intends to establish "her own consulting company," through which she would "work as a Revenue Management/Pricing analyst in the tourism sector, mainly for small and medium-sized American companies in the Travel and Tourism sectors." The Petitioner stated that her company would "provide U.S. companies with product optimization, target customer identification and product placement timing, price management, and instruction on the implementation and use of different revenue optimization systems."

The first *Dhanasar* 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 as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner stated that her "Proposed Endeavor has national importance because she intends to help American small and medium-sized companies in the tourism and travel industries [to] maximize their revenues and, therefore, contribute even more to the U.S. economy." The Petitioner cited a passage in *Dhanasar*, indicating that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects . . . may well be understood to have national importance." *Id.* at 890. The Petitioner also cited statistics about small businesses and the tourism and travel industries.

The Director denied the petition, stating: "The petitioner has not shown the wider economic effects of the proposed endeavor. . . . The record does not show that the petitioner's proposed endeavor stands

to sufficiently extend beyond their company, future clientele, or business partnership to impact the field more broadly at a level commensurate with national importance.”

On appeal, the Petitioner mostly repeats assertions she had previously made in response to a request for evidence. She asserts that her “Proposed Endeavor has national or even global implications within a particular field.” She repeats previously cited statistics, indicating that “small businesses . . . make up 99.9% of all U.S. businesses” and that the tourism and travel industries produced “a real output of \$362 billion in 2021.” Against these numbers, the Petitioner does not establish the broader economic significance of her proposed endeavor.

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Likewise, the Petitioner states that she plans to open offices in [REDACTED] Florida, “two of the most visited places in the world.” The Petitioner did not specify how much of an effect her proposed endeavor would have on the travel and hospitality industries in those cities. The Petitioner cannot meet her burden of proof by asserting that her proposed endeavor will provide unspecified benefits to individual clients in a major industry. Professionals in the Petitioner’s field are ordinarily subject to the statutory job offer requirement, and therefore general information about the field or industry does not establish eligibility for a waiver of that requirement.

While the Petitioner has cited a number of statistics and facts, she has not always explained their relevance. For example, she cited a presidential proposal for “leveling the playing field for small business owners by reforming the tax code,” but she has not explained how her proposed endeavor would reform the tax code. Also, she quoted “a study published by the New American Economy”: “[M]any employers have trouble finding enough American workers to staff resorts, hotels, and attractions. **Current policies . . . keep American businesses from finding the workers on which the tourism industry relies.**” The Petitioner emphasized the second quoted sentence with bold type, but she did not explain its relevance to her proposed endeavor. The Petitioner has not explained how her proposed endeavor, focusing on optimizing prices and increasing revenues, would affect industry-wide labor supply issues.

In light of the above conclusions, the Petitioner has not met her burden of proof to establish the national importance of her proposed endeavor. Detailed discussion of the remaining prongs of the *Dhanasar* national interest test cannot change the outcome of this appeal. Therefore, we reserve argument on the other prongs.²

² See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.