



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

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

In Re: 28054858

Date: AUG. 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. *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. The Director did not comment on whether the Petitioner qualifies for classification as either a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. However, the Director concluded that the Petitioner had not 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**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established

eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

## II. ANALYSIS

As noted above, the Director did not address whether the Petitioner qualifies for second-preference classification as either an individual of exceptional ability or as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act. However, because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See id.*; *see also 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"); *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).

Initially, the Petitioner described the endeavor as a plan "to continue my activities as a [b]usiness [m]anager." The Petitioner elaborated that she would "promote business and marketing management, ultimately contributing to American companies in various industries." She asserted that she would "supervise and lead company operations and employees, performing a range of tasks to ensure company productivity and efficiency, including implementing business strategies, evaluating company performances, and supervising employees." She asserted that she would "help small and medium-sized enterprises in the U.S. improve operations and achieve better productivity and profitability levels, therefore generating revenues within the country and creating employment opportunities." We note, however, that the Petitioner did not initially assert that she would found her own company.

In response to the Director's request for evidence (RFE), the Petitioner asserted that the proposed endeavor is a plan "to direct and oversee the operations of [redacted] a management consulting agency that will operate from [redacted] Florida." The Petitioner asserted that her startup company "was incorporated on [redacted] 2021, in Florida," which we note was after the petition filing date. The Petitioner elaborated that her company "will provide expert financial and management advisory services including . . . planning, feasibility study, human resource management, asset management, and cost control," which will "help[] each client meet their targets with minimum time and costs [and] result in an increase of job opportunities, wages, and revenues, and help boost the U.S. economy." The Petitioner also submitted a business plan dated May 2022 in response to the RFE. The business plan indicates that the Petitioner's company would employ nine workers in the first year of operation, increasing to a total of 30 employees in the fifth year of operation. Although the business

plan estimates total payroll expenses of \$861,824 in the fifth year of operation, we note that \$861,824 divided among 30 employees is an average annual wage of \$28,727 per worker.

The Director concluded that the record “does not demonstrate that the proposed endeavor has national importance.” The Director acknowledged that the Petitioner’s business plan asserted that her startup company would employ 30 workers within the first five years of operation; however, the Director noted that the Petitioner did not establish how doing so “would have substantial positive effects in a community” or otherwise provide substantial positive economic effects “which extend beyond the community to impact the [b]usiness industry more broadly,” as required by the first *Dhanasar* prong. The Director also concluded that the record did not establish that the proposed endeavor has substantial merit, also required by the first *Dhanasar* prong, and that the record did not satisfy the second and third *Dhanasar* prongs. See *Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner repeats, verbatim, passages from her RFE response. The Petitioner summarizes her RFE response as having established that she “is highly experienced, and her proposed endeavor will have broad implications by increasing cash flow, increasing sales, increasing marketing shares, reducing companies’ costs, increasing revenues, and achieving greater control of expenses and receipts, as well as greater organization of projects.” The Petitioner references her prior work experience, and she also repeats, verbatim, passages from an opinion letter from [REDACTED] an associate professor at the University [REDACTED] submitted in response to the Director’s RFE, regarding the Petitioner’s prior work experience. The Petitioner also summarizes letters of recommendation already in the record, which praise the Petitioner’s prior work experience, and she references awards a prior employer gave her in 2013 and 2015.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

First, the Petitioner’s focus on appeal on her prior work experience—and internal company awards given to her during her prior work experience—with regard to the first *Dhanasar* prong is misplaced. Although an individual’s education and prior work experience are material to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—they are immaterial to the first *Dhanasar* prong—whether a particular, prospective, proposed endeavor has both substantial merit and national importance. See *id.* at 888-91. We further note that repeating on appeal verbatim assertions already in the record, submitted in response to a prior RFE, does not address how a subsequent decision may contain an error.

Next, we acknowledge that the Petitioner’s description of the proposed endeavor appears to benefit her own startup business management consulting company and the clients to whom her company provides services. As noted above, the Petitioner asserts that her endeavor will result in “increasing cash flow, increasing sales, increasing marketing shares, reducing companies’ costs, increasing

revenues, and achieving greater control of expenses and receipts, as well as greater organization of projects” for her clients. However, the record does not elaborate on the nature or numerosity of clients; the extent to which their cash flows, sales, marketing shares, and revenues may increase; the nature of the clients’ projects and how the extent to which they will be greater organized, and other details about the proposed endeavor that may indicate it will have “substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90. Similarly, as noted above, although the Petitioner’s business plan estimates total payroll expenses of \$861,824 in the fifth year of operation, the amount of \$861,824 divided among 30 employees is an average annual wage of \$28,727 per worker. The record does not establish how paying an average annual wage of \$28,727 per worker to 30 workers in [ ] Florida, is indicative of “significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area.” *Id.* Relatedly, neither the business plan nor other evidence in the record elaborates on how the Petitioner’s startup business management consulting company operating in [ ] Florida, may have “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *See id.* at 889.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record establishes that the proposed endeavor has substantial merit, also required by the first *Dhanasar* prong, and whether the record satisfies the second or third *Dhanasar* prong. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

### III. CONCLUSION

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

**ORDER:** The appeal is dismissed.