



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

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

In Re: 28963974

Date: DEC. 1, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) systems specialist, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding the Petitioner had not established eligibility for 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, petitioners must 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if:

- 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.

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).

II. ANALYSIS

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. At initial filing, the Petitioner's cover letter stated:

[The Petitioner] is an especially educated and experienced in IT infrastructure for business development, growth, and continuity. [The Petitioner] seeks to utilize her unique experience in the United States to provide this subset of IT systems services for the benefit of United States' businesses, including those in the manufacturing and food production industries, as she did in her home country of Venezuela.

The benefit of [the Petitioner's] work is of substantial merit because she will offer her unique background in Systems Engineering, providing a positive impact that improves the efficiency and reliability of U.S. companies' systems

In addition, the Petitioner provided registration information for her business, [REDACTED] [REDACTED] and documents relating to various topics, such as the U.S. Small Business Administration, STEM [science, technology, engineering, and mathematics] for women and the U.S. economy, computer systems engineers, essential critical infrastructure workforce, and women, minorities, and persons with disabilities in science and engineering.

In response to the Director's request for evidence, the Petitioner offered a statement indicating:

My proposed endeavor is to work in the United States as a Computer System Engineer for U.S. companies and public entities. In [REDACTED] 2018, I moved to the United States and established my own company named "[REDACTED]" a Florida corporation. Thus, I'm creating my own employment opportunity in the United States which has the potential of generating jobs for U.S. residents, paying taxes, and stimulating growth.

My goals are to improve the U.S. I.T. industry and to provide U.S. clients with safe and effective I.T. solutions to enhance their businesses. To broaden the impact of my work on the U.S., I plan to consult with other I.T. professionals and I.T. departments, project managers, coders, and web and software developers, to enable them to bring their clients better results. I believe that U.S. citizens deserve better I.T. solutions.

I will leverage my extensive background in both market research and I.T. business development to have a strong vision of how to boost I.T. Infrastructure progress and help the US nation to simplify its daily life

The Petitioner also offered ownership, profit and loss, and lease documents for her company, a business plan, and evidence regarding critical infrastructure workers, cybersecurity, and "The American Jobs Plan."

Regarding the substantial merit, the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. As indicative above, the Petitioner provided a wide range of topics and information relating to the IT field. Here, the Petitioner has shown the substantial merit of her proposed endeavor.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner argues her submission of “Probative Research,” the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her particular IT services, including through her company, rather than the importance of IT, critical infrastructure workers, system engineers, and other related topics.² 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 Petitioner also emphasizes her “extensive background” and “the evidence proactively demonstrated that [she] possesses skills that go well above and beyond skills needed to merely fill a shortage.” However, the Petitioner’s skills, experience, and abilities relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor she proposes to undertake has national importance under *Dhanasar*’s first prong. Similarly, the Petitioner argues her submission of “[l]etters from clients.” While the letters discuss the Petitioner’s particular services to each respective client, including her work on two project apps, the letters do not show the broader impact of the Petitioner’s work rather than limited to her clients, who employ her for her services. Moreover, the letters discuss the Petitioner’s prior work and accomplishments and relate to the second prong rather than the first prong.

Further, the Petitioner contends that she presented two expert opinion letters who found the proposed endeavor has national importance. The letters, however, makes the same arguments, discussed above, relating to the importance of IT, small businesses, computer system engineers, STEM occupations, economic benefits from immigrants, national initiatives, and other general topics rather than focusing on the national importance of the Petitioner’s particular services and company. Furthermore, the letters do not sufficiently explain and articulate how the Petitioner’s services and business have broader implications for our country. 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. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how her proposed endeavor largely influences the field and rises to the level of national importance. In *Dhanasar*, we determined 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. Likewise, the record does not show through supporting documentation how her business stands to sufficiently extend

² The Petitioner’s arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national importance part.

beyond her prospective clients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

In addition, although the Petitioner provided a business plan, the Petitioner did not demonstrate how her business' claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the sales forecast \$342K in year 1 to \$1.1M in year 5, the business plan does not establish the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, although the plan claims the business would create 6 positions in year 1 to 19 positions in year 5, the Petitioner did not demonstrate that such future staffing levels would provide substantial economic benefits to Florida or the region or U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not show that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not establish that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her qualification under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.³

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

³ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where applicants do not otherwise meet their burden of proof).