



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

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

In Re: 28819204

Date: DEC. 4, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing manager, 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, 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 concluded the Petitioner qualified as an advanced degree professional, but further determined that he did not demonstrate his eligibility for a 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 as the Petitioner did not establish that his proposed endeavor has national importance. Since this issue is dispositive, we decline to reach and hereby reserve the remaining issues. *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 alternative issues on appeal where an applicant is otherwise ineligible).

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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 discretion¹, 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, a native and citizen of Brazil, stated she intended to continue her career as a marketing professional in the United States through a Florida based company she had established, F-S-G-, LLC. The Petitioner asserted her company would operate “in the gun and ammunition markets,” selling “firearms, ammunition, and related accessories for sports, hunting, self-defense and other practical shooting purposes.” The Petitioner indicated the company would use Brazil as a “test market” and incentivize multiple economic activities, significantly increasing business revenues, and therefore contribute to the U.S. economy. The Petitioner explained the national importance of her proposed endeavor as follows:

My proposed endeavor will lead to enhanced national and international visibility regarding U.S. business industry functions, thus improving the nation’s market productivity and global commercial appeal. Even more, by marketing, selling, and exporting firearms and related products to abroad markets, I will identify viable opportunities for business development and business diversification via cross-border contracts, primarily stemming from Latin America – specifically Brazil. This will incentivize cross-border transactions between the high-powered economies, increase the influx of foreign direct investments (FDI) by foreign consumers in the nation, contribute to the generation of jobs for U.S. workers, and spur other substantial economic effects for the benefit of the United States.

The Petitioner stated her company would maintain purchases and business through an online store, allowing international clients to browse and purchase U.S. firearms related products and indicated she was “currently negotiating agreements with U.S. partners that will support the company in the export process.” The Petitioner asserted her company would also launch a gun and accessories manufacturing endeavor and patent a variety of products to be manufactured in the United States. The Petitioner stated her company planned on hiring two employees during its first year of operation and six by year two, paying \$88,997 in taxes by its fifth year of operation.

The Director later issued a request for evidence (RFE) stating that the Petitioner did not submit sufficient evidence to establish the Petitioner’s proposed endeavor would be of national importance, specifically that it would have national or even global implications within the marketing field. The Director determined the provided evidence did not demonstrate that the impact of the Petitioner’s proposed business would have substantial economic effects. As such, the Director requested that the

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).

Petitioner submit a detailed description of the proposed endeavor, why it is of national importance, and documentary evidence supporting its national importance. The Director further indicated the Petitioner should provide evidence to establish the endeavor's potential prospective impact, such as documentation to substantiate how it would have national or global implications in the field, have significant potential to employ U.S. workers or have other substantial economic effects, broadly enhance societal welfare or cultural or artistic enrichment, or impact a matter that a government entity has described as having national importance.

In response, the Petitioner stated she had been working for F-S-G-, LLC as a marketing and sales manager since 2021² responsible for “elaborating and implementing a marketing and communication plan; creating and executing online media campaign; video production on social media; co-op campaigns with main manufacturers...[and] developing long-term business relationships with partners, distributors, and clients.” The Petitioner indicated that her goal was to bring clients from Brazil to participate in events, trade fairs, training, and practical shooting competitions in the United States.

Later in the same RFE response letter, the Petitioner stated that she planned on developing and expanding another company A-E- USA LLC, “a company that will serve U.S. businesses by providing (1) Keratine, (2) Intensive Care, (3) Beauty Maintenance Kit, and (4) Hair Perfume all based on a product direct sales revenue model.” The Petitioner again asserted this endeavor would attract foreign direct investment “that will transform into new jobs, investments, and business opportunities, which will contribute to numerous sectors of the national interest.” The Petitioner emphasized her marketing expertise and skills, stating that “her measured marketing adaptations, reflect her proposed endeavor’s substantial merit and national importance, as not only has she prompted company growth, but her tactics have led to national and international economic developments.” The Petitioner pointed to the impact of foreign direct investment on the U.S. economy and job creation generated by foreign-owned companies operating in the United States.

In addition, the Petitioner submitted another professional plan and statement where she reiterated her plans regarding F-S-G-, LLC, the company she asserted operated in the firearm and ammunition market. However, the Petitioner also submitted a business plan specific to A-E- USA LLC, dated in December 2020, setting forth plans to import and distribute “high-quality cosmetic products,” more specifically the “multi-billion dollar vegan cosmetics market.” The Petitioner projected that this company would generate the payment of at least \$390,000 in wages and salaries and lead to the employment of 12 U.S. workers during its first five years. The Petitioner also provided a 2021 IRS Form 1065, U.S. Return of Partnership Income related to F-S-G-, LLC reflecting that it earned \$204,606 revenue and paid no wages and salaries during that year. Further, the Petitioner submitted invoices related to this company reflecting the purchase of firearms, ammunition, and related accessories.

In denying the petition, the Director concluded the Petitioner did not establish the substantial merit of the Petitioner’s proposed endeavor, noting that she did not provide specific insight into what she intended to do as a marketing manager in her field. The Director also determined the Petitioner did

² The petitioner was filed in July 2020, the RFE was issued in July 2022, and the RFE response was received in December 2022. The current appeal was filed in May 2023.

not demonstrate the national importance of her proposed endeavor, emphasizing she did not specify how her proposed endeavor would improve U.S. market productivity and global appeal as claimed. The Director further pointed to the Petitioner's business plan related to the proposed firearms business and concluded that this did not establish its economic impact on the firearms industry more broadly.

On appeal, the Petitioner again points to her proposed cosmetics company, A-E- USA LLC, asserting that it would impact the cosmetic industry by generating \$390,000 in wages within its first five years as well as the employment of 12 U.S. workers. The Petitioner contends this proposed business will positively impact job creation in "underutilized areas" and "bring investments to the region," including "attracting FDI that will transform into new jobs, investments, and business opportunities, which will contribute to numerous sectors of the national interest." The Petitioner points to industry reports and articles submitted to the record, including one discussing research from Forbes that marketing investments and assets have a major impact on enterprise value and "can contribute over 50% of firm value." The Petitioner asserts that "nearly all industries require steep marketing strategies, which, in turn, directly benefits the nation's economy and overall production levels." The Petitioner asserts that her "measured adaptations, reflect her proposed endeavor's substantial merit and national importance, as not only her prompted company growth, but have led to national and international economic developments."

The Petitioner also emphasizes her 17 years of professional experience in marketing and business development, asserting this would "allow her to provide any U.S. firm or company more rapidly and efficiently with a competitive advantage, regardless of sector or industry." The Petitioner also notes articles she submitted to the record discussing the economic impact of immigrant entrepreneurs, such as 5.9 million U.S. jobs generated by foreign-owned companies, 2.4 million immigrant entrepreneurs in the United States, and over \$65.5 billion in income generated from these immigrant businesses. The Petitioner contends that the United States "would benefit from investing in well-versed professionals such as the [Petitioner]," emphasizing her knowledge and skills, and her ability "to advise corporations about potential opportunities for business development and sales expansion, as well as effective market strategies and initiatives."

As a preliminary matter, although we acknowledge that the Director concluded that the Petitioner did not establish the substantial merit of her proposed endeavor, we decline to analyze and hereby reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25; *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7. Here, since the issue is dispositive, we will only analyze whether the Petitioner established that the national importance of the Petitioner's 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 "the specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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.

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. The Petitioner

submitted a variety of proposed endeavors thereby leaving substantial uncertainty as to their potential prospective impact. For instance, in support of the petition, the Petitioner exclusively emphasized her proposed company focused on the distribution and sale of U.S. firearms, ammunition, and related accessories in Brazil. However, in response to the RFE, the Petitioner discussed not only the proposed firearms business, but also a company proposing to sell cosmetics. Now, on appeal, the Petitioner again points to the proposed cosmetics company, but also appears to emphasize the importance of her apparent provision of professional marketing services for various U.S. companies. For example, the Petitioner states on appeal that she would “advise corporations about potential opportunities for business development and sales expansion, as well as effective market strategies and initiatives.” Therefore, it is not sufficiently clear whether the Petitioner asserts that her proposed endeavor would be of national importance in the firearms industry, the cosmetics industry, or the marketing field generally, and given this ambiguity, there is substantial question these various endeavors would lead to a national impact on all these fields. Since the Petitioner’s proposed endeavor is left ambiguous, so is its potential prospective impact. The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the Petitioner has set forth ambiguous and unsupported claims with respect to the proposed national impact of her varying proposed endeavors. For example, as noted by the Director, the Petitioner asserted that her proposed firearms export business would “lead to enhanced national and international visibility regarding U.S. business functions,” improve “the nation’s market productivity and global commercial appeal,” and “identify viable opportunities for business development and business diversification.” However, the Petitioner does not sufficiently explain what U.S. business functions would be impacted by her proposed endeavor, what market productivity and international visibility would be enhanced, or business development and diversification would be identified, and led to national impact.

In response to the RFE, the Petitioner discussed marketing and communications plans, online media campaigns, video production and social media strategies, and “co-op campaigns” she implemented with respect to its firearms distribution company and partners, distributors, and clients it had developed relationships. However, again, these marketing plans, campaigns, strategies, partners, distributors, and clients are left explained, unidentified, and unsupported. In fact, these claimed business activities appear limited, as the Petitioner provided a 2021 IRS Form 1065 reflecting that her firearms company only earned \$204,606 revenue and paid no wages and salaries during that year, leaving question as to the potential national impact of this proposed endeavor on a firearms industry the Petitioner states accounted for \$52 billion in revenue and employed over 312,000 annually. It is also noteworthy that the Petitioner asserted that it proposed firearms business would lead to the employment of only eight employees after five years, again leaving significant question to its national impact on the industry. Likewise, the Petitioner also discussed plans to manufacture firearms and related products, and to secure patents related thereto, but submitted little explanation and evidence to corroborate these assertions. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Similarly, on appeal, the Petitioner points to her proposed cosmetics company, asserting that it would impact the cosmetic industry by generating \$390,000 in wages within its first five years as well as the employment of 12 U.S. workers. The Petitioner also indicated in its cosmetics company business plan that the cosmetics industry accounted for over \$26 billion in revenue in 2020, again leaving uncertainty

as to how her company would have a national impact on the industry given the provided hiring and wage projections. Likewise, the Petitioner contends that the proposed cosmetics business will positively impact job creation in “underutilized areas” and “bring investments to the region,” including “attracting FDI that will transform into new jobs, investments, and business opportunities, which will contribute to numerous sectors of the national interest.” The Petitioner yet again does not explain in detail or document how this proposed business would impact “underutilized areas,” “bring investments to the region” and “attract FDI,” nor does it identify the “numerous sectors of the national interest” it would prospectively impact. *Id.*

On appeal, the Petitioner appears to again shift the focus on her endeavor to her apparent provision of professional marketing services generally in the U.S. market, noting her seventeen years of experience in marketing and business development and asserting this would “allow her to provide any U.S. firm or company more rapidly and efficiently with a competitive advantage, regardless of sector or industry.” The Petitioner also states that her ability “to advise corporations about potential opportunities for business development and sales expansion, as well as effective market strategies and initiatives.” However, the Petitioner’s experience and knowledge in and of itself is not relevant to demonstrating national importance of the Petitioner’s proposed endeavor but is only probative to whether she is well positioned to advance the endeavor under the second prong of *Dhanasar*. See *Matter of Dhanasar*, 26 I&N Dec. 884, 892-93. Therefore, we do not find the emphasis on her skills and experience on appeal convincing in establishing the national importance of her proposed endeavor.

Lastly, the Petitioner also discusses on appeal the economic impact of immigrant entrepreneurs, such as approximately 5.9 million U.S. jobs generated by foreign-owned companies, 2.4 million immigrant entrepreneurs in the United States, and over \$65.5 billion in income generated from these immigrant businesses. Again, it is not clear how the Petitioner’s ambiguous and rather limited business plans would have a national impact on employment and revenues and substantially impact the contribution of immigrant entrepreneurs on a national scale. The Petitioner further points to an industry article discussing research from Forbes that marketing investments and assets have a major impact on enterprise value and “can contribute over 50% of firm value.” The Petitioner asserts that “nearly all industries require steep marketing strategies, which, in turn, directly benefits the nation’s economy and overall production levels.” Even if we accept these premises set forth in the article, it is not clear how such general observations about investing in marketing demonstrate the potential prospective impact of the various proposed endeavors submitted by the Petitioner throughout the record.

The Petitioner’s statements reflect a vague intention to launch potential business in different industries and to provide professional marketing services. However, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of her various proposed endeavors such that they rise to the level of national importance. 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. *Matter of Dhanasar*, 26 I&N Dec. at 893. As noted by the Director, the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond her clientele, who were not made sufficiently clear through her assertions and the submitted evidence. As such, the Petitioner has not demonstrated that his proposed endeavor would have a broad influence commensurate with national importance.

Because the documentation in the record does not 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.

III. CONCLUSION

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

ORDER: The appeal is dismissed.