



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

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

In Re: 28808461

Date: DEC. 04, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an aeronautical engineer, seeks classification as a member of the professions holding an advanced degree. 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. 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 Texas Service Center denied the petition, concluding that while the Petitioner qualifies as an advanced degree professional,<sup>1</sup> the record did not establish that her endeavor would have national importance or that, on balance, it would benefit the United States to waive the job offer requirement. 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. 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. Section 203(b)(2) of the Act.

Neither the statute nor the pertinent regulations define the term "national interest." *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS

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<sup>1</sup> The Director's decision states that the Petitioner qualifies as an advanced degree professional because she has a U.S. master's degree. The record does not support this conclusion. However, the Petitioner does have a foreign degree which is equivalent to a U.S. baccalaureate degree, as well as five years of progressive work experience in her specialty. As such, she qualifies as an advanced degree professional under 8 C.F.R. § 204.5(k)(2).

may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that: (1) 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 benefit the United States to waive the requirements of a job offer and thus of a labor certification.

## II. ANALYSIS

The sole issue on appeal is whether, using the *Dhanasar* test, the Petitioner qualifies for a waiver of the job offer requirement in the exercise of discretion. The Director concluded that while the Petitioner meets the second prong of *Dhanasar* by being well-positioned to advance her endeavor, she does not meet the first or third prongs and so does not qualify for a national interest waiver. On appeal, the Petitioner submits a brief contending that the Director's decision was an abuse of discretion because it did not give due consideration to the evidence or employ the correct evidentiary standards. Upon review of the entire record, we conclude that the Petitioner has not overcome the Director's denial grounds by providing relevant, probative, and credible evidence establishing that her endeavor is more likely than not to have an impact rising to the level of national importance. *Id.* at 889-90; *Matter of Chawathe*, 25 I&N Dec. at 376 (describing the Petitioner's burden of proof under the "preponderance of the evidence" standard used in these proceedings).

The first prong of *Dhanasar*, substantial merit and national importance, focuses on the specific endeavor the Petitioner proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas, including business, entrepreneurialism, science, technology, culture, health, and education. *Id.* When considering an endeavor's national importance, however, the relevant question is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Id.* at 889-90. An endeavor may have national importance if, for example, it has national implications within a particular field or has significant potential to have a substantial positive economic effect, especially within an economically depressed area. *Id.*

Here, the Petitioner proposes to work as an aviation consultant in the United States. The Director concluded that while this endeavor has substantial merit, the record did not establish its national importance, and so the endeavor does not meet the first *Dhanasar* prong.

On appeal, the Petitioner emphasizes the importance of aviation and aviation safety to the United States, and states that the Director improperly ignored the petition's documentation regarding the aviation industry. However, as noted by the Director, working in an area with substantial merit does not mean that one's endeavor will have national importance. In *Dhanasar*, the noncitizen's work as a science teacher was found to have substantial merit but did not qualify him under the first prong because the evidence did not show how that work would impact the field of science education more broadly. *Id.* at 893. Similarly, while the Petitioner here contends that her work will impact the field of aviation, she has not provided any documentation of what that specific impact would be or how it would extend beyond her consulting clients.

We acknowledge the underlying petition's claim that the Petitioner's endeavor will be nationally important because she will be employed in a STEM (Science, Technology, Engineering, or Mathematics) field. However, "as in all cases, the evidence must demonstrate that a STEM endeavor

has both substantial merit and national importance.” 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policy-manual>. The evidence does not demonstrate national importance here.

In one of several personal statements, the Petitioner states that her “proposal is to undertake and provide a consulting program inside and outside the country, opening new innovation proposals from different airports in the country . . .” and that she “would like to become part of the team of one of the largest aircraft manufacturers in aviation in the United States, such as Boeing . . . in order to be a consultant to large and medium-sized companies in the United States and throughout America . . .” She further states that “[i]n the long term, [she] would love to be able to give motivational talks to future engineers at universities on airline and aircraft reliability, an impact that will be felt throughout the airline industry.”

The purpose of the national interest waiver is not to facilitate a petitioner’s U.S. job search. While no job offer is required, anyone seeking such a waiver must identify the “specific endeavor” that they propose to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889; see generally 6 *USCIS Policy Manual*, *supra*, at F.5(D)(1). Here, the Petitioner has not specified whether she will work for airports, Boeing, or “large and medium-sized companies,” what specific aviation safety or maintenance issues she intends to address, or how she will divide her time between these activities and pursuits such as motivational speaking. When assessing national importance, we look for an endeavor’s broader implications. *Matter of Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner has not provided documentation establishing what her work will specifically entail, and as such has not demonstrated how her employment as an individual consultant will impact the broader field of aviation on a national level.

These concerns also apply to the Petitioner’s contentions regarding the economic impact of her endeavor. We acknowledge the petition’s documentation regarding the economic impact of the aviation industry as a whole. However, the record does not quantify or document what economic impact would be attributable specifically to the Petitioner’s endeavor. The Petitioner therefore has not established that her endeavor, in and of itself, has significant potential to employ U.S. workers or otherwise generate the kinds of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 889-90.

Finally, while we acknowledge the many support letters attesting to the Petitioner’s work experience and skills, this documentation relates to the second *Dhanasar* prong regarding whether she is well-positioned to advance the proposed endeavor. It does not relate to what impact the Petitioner’s endeavor will have. The Petitioner has not provided sufficient evidence to show that her endeavor will have an impact rising to the level of national importance.

Because the Petitioner has not established her eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the remaining prongs and hereby reserve them. 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 did not otherwise meet their burden of proof). However, we note that while the Petitioner has education and successful work experience relating to her endeavor, she has no business plan or other specific model for her future activities beyond seeking consulting work in her field with an unspecified

employer. She also has not provided documentation of any progress made towards this goal, such as the solicitation of interest from customers, investors, or other interested parties. *Matter of Dhanasar*, 26 I&N Dec. at 890. The provided recommendation letters only speak to the Petitioner's past work in Colombia and provide no information about her U.S. endeavor, and the various documents regarding U.S. government interest in aviation safety pertain to the field in general, not the Petitioner's endeavor in particular. In any future proceedings, the Petitioner must address the issue of whether she is well-positioned to advance her endeavor under the second *Dhanasar* prong.

### III. CONCLUSION

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

**ORDER:** The appeal is dismissed.