



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

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

In Re: 26401485

Date: JUN. 23, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an operations manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant classification. *See* 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 that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she 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 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. 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) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions.¹ *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The regulation at 8 C.F.R. §204.5(k)(2) defines an advanced degree as “any United States academic or professional degree or a foreign equivalent degree *above* that of baccalaureate” (emphasis added). The Petitioner demonstrated that she has a foreign equivalent of a U.S. bachelor’s degree with

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

a copy of her diploma and transcripts from the [redacted] University [redacted] in Brazil along with a certified academic evaluation. Although the Petitioner submitted an associate degree in business administration from [redacted] in Florida, the record does not demonstrate that this associate degree is an advanced degree “above” that of her bachelor’s degree pursuant to 8 C.F.R. § 204.5(k)(2).

In addition, the Petitioner provided three employment letters from [redacted] and [redacted]. The Petitioner’s diploma shows that she completed her bachelor’s degree on February 17, 2011. The employment letter from [redacted] states that the Petitioner worked as a service team manager from January 3, 2000, to June 1, 2004, prior to completing her bachelor’s degree. The employment letter from [redacted] states that the Petitioner worked as an office manager from May 27, 2009, to November 1, 2011, but only nine months of her work experience are post-baccalaureate. The employment letter from [redacted] demonstrates she has post-baccalaureate work experience as an accounting payable clerk from October 2019 to April 2020, but this experience lasted only for six months.³ In sum, the Petitioner’s employment letters do not demonstrate that she has at least five years progressive experience following her bachelor’s degree as required by 8 C.F.R. § 204.5(k)(2).

The Petitioner did not demonstrate that she has an advanced degree above that of her bachelor’s degree or that she has at least five years of post-baccalaureate experience. Therefore, we withdraw the Director’s decision that the Petitioner qualifies as a member of the professions holding an advanced degree.

B. National Interest Waiver

The Director found that the Petitioner’s proposed endeavor has substantial merit and national importance under the first prong of *Dhanasar* but denied the petition on the second prong. Yet, the Director did not identify nor describe the Petitioner’s proposed endeavor in the decision. The Director also did not discuss or analyze any of the evidence in the record when making a finding that the Petitioner meets the first prong of *Dhanasar*.

An officer must fully explain the reasons for denying a visa petition to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Therefore, we will withdraw the Director’s decision on the first prong and exercise our jurisdiction to review the case de novo. Upon review, we find that the Petitioner has not sufficiently demonstrated that her proposed endeavor meets the first prong of the *Dhanasar* framework.

³ Furthermore, the Petitioner entered the U.S. under a F-1 nonimmigrant visa and Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, shows that her school program ended on April 26, 2020. The Petitioner subsequently obtained an approval for a post completion optional practical training (OPT) from May 7, 2020, to May 6, 2021. However, the Petitioner submitted an employment letter stating that she worked at [redacted] from October 2019 to April 2020 before she obtained the approval for OPT.

The Petitioner initially stated on Form I-140 that her proposed employment is “general and operations manager” and her proposed endeavor is “to contribute to American companies in the area of financial management” and “assist companies in the management of operational processes in the financial area.” With the initial filing the Petitioner submitted evidence of her education and experience, her professional plan, and eligibility for a national interest waiver, including an expert opinion letter, recommendation letters from former and current co-workers, industry reports on importance of a business manager, and articles broadly discussing the impact of Covid on business and economy, and labor shortage in the field of financial and business services.

In response to the Director’s request for evidence (RFE), the Petitioner submitted an updated professional plan. This time, the Petitioner stated that she works in the finance department team at [REDACTED] Incorporated and plans to improve financial planning processes at the company by “monitoring food waste during the production process in the food industry,” “monitoring the payment of . . . the company’s main suppliers,” “identification and improvement of the areas’ internal cost control processes,” “database maintenance,” “organizing the reporting process,” and “bringing strategic vision to the decision makers.” The Petitioner also submitted additional recommendation letters from co-workers at [REDACTED] and reports on food waste and food chain supply.

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. 884. The Petitioner must also identify the “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889. The Petitioner’s initial professional plan described her proposed endeavor generally, as assisting companies to operate efficiently in the field of business, without any specific plans. Her updated professional plan after the Director’s RFE described her employment at [REDACTED] and her goal of reducing food waste costs, monitoring supply of raw materials, improving financial processes, generating business growth, and increasing profits for the company. Therefore, we find that the Petitioner has established substantial merit of her proposed endeavor.

However, the evidence does not establish that the Petitioner’s endeavor meets the national importance element under the first prong of *Dhanasar*. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. In *Dhanasar*, 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. Here, the Petitioner also has not shown that her proposed endeavor extends beyond her employment at [REDACTED]. The Petitioner has not offered sufficient evidence linking her business management duties at the company to having a broader reach that rises to national importance.

The letters of recommendations describe the Petitioner's experience, skills, and abilities at her workplace. This type of evidence relates to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. These letters do not address how the Petitioner’s proposed endeavor of improving the financial practices of her employer alone will substantially benefit the U.S. business or food industries, as contemplated by *Dhanasar*: “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *Id.* The letters also do not suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States.

In addition, the Petitioner offered an expert opinion letter from an assistant professor of business at [redacted] University. The expert letter discusses the Petitioner's skills and abilities as a financial manager and speculates on how her services can potentially improve business practices but does not offer any persuasive detail concerning the Petitioner's proposed endeavor or how her endeavor's impact would extend beyond companies that she will serve.

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 has not provided any supporting evidence, aside from claims in her professional plan, that her employment and business management duties stand to provide substantial economic benefits in Florida or the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner also submitted several research reports and articles on importance of business professionals, talent shortage in the business industry, and emerging problems of food waste and food insecurity in the United States. However, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. The Petitioner must demonstrate the national importance of her providing specific business operations services to [redacted]. However, the Petitioner does not demonstrate that her duties of reducing food waste or improving financial management at her company somehow extend beyond her current employer or even future employers, to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. The economic benefits that the Petitioner claimed depend on numerous factors and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed endeavor and the claimed results.

Based on the foregoing, we find that the record does not establish national importance of the Petitioner's proposed endeavor and the Petitioner does not meet the first prong of *Dhanasar*.

The Petitioner contends on appeal that the Director erred in denying the petition without giving her an opportunity to submit additional evidence on the second prong issue of being well-positioned to carry out her proposed endeavor. Here, the Petitioner has not established that she qualifies under the EB-2 classification as a professional holding an advanced degree and that her proposed endeavor is of national importance. As the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding her eligibility under the second prong as well as the third prong of *Dhanasar*. See *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”); 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 demonstrated her eligibility as a member of the professions holding an advanced degree at 8 C.F.R. § 204.5(k)(2). Also, the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework and therefore does not merit 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.