



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

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

In Re: 28819049

Date: NOV. 08, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the legal services industry, seeks employment-based second preference (EB-2) 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 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. The Director determined that the Petitioner demonstrated her eligibility for the underlying EB-2 classification but did not establish that a discretionary 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) 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates that:

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).

- 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 Director determined that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree and the record supports this conclusion.² Therefore, the sole issue on appeal is whether the Petitioner established that she merits a national interest waiver as a matter of discretion.

In denying the petition, the Director addressed all three prongs of the *Dhanasar* analytical framework and concluded that the Petitioner did not demonstrate that she meets any of them. On appeal, the Petitioner asserts that the Director did not objectively evaluate all the submitted evidence under the preponderance of the evidence standard. For the reasons provided below, we agree with the Director that the Petitioner has not met her burden to demonstrate the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. The Proposed Endeavor

Although the Petitioner indicated on the Form I-140, Immigrant Petition for Alien Worker, that she intends to work as a “Paralegal and Legal Assistant” in the United States, she submitted a professional plan indicating that she is self-petitioning as an entrepreneur and plans to open her own legal consultancy business in the United States.

Subsequently, in response to a request for evidence (RFE), the Petitioner submitted an updated “definitive statement” and indicated her intent to establish and manage a legal consulting business in Massachusetts. She stated that her firm “will specialize in supporting U.S. companies by providing Legal Advisory, Paralegal Services, Legal Advisory for Business Contracts, and Legal Advisory Packages on Business Contracts in the U.S. market.” The submitted business plan for the proposed endeavor includes industry and market analyses, financial forecasts and projections, and a description of the firm’s proposed service offerings and personnel. With respect to future staffing, the business plan projects that the Petitioner’s new firm would hire 41 employees in the first five years of operations, pay over \$513,000 in income taxes, and achieve cumulative revenues of \$12.8 million by the end of its fifth year.

B. Substantial Merit and National Importance

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture,

² The Petitioner provided an official academic record from a Brazilian university and an evaluation of her academic credentials indicating that she holds the foreign equivalent of a U.S. bachelor’s degree in law. She also submitted letters from prior employers documenting that she has more than five years of progressive post-baccalaureate work experience in the legal field. See 8 C.F.R. § 204.5(k)(2) (defining “advanced degree”).

health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The record includes media articles, government publications, and industry reports on the topics of the legal profession, the legal services industry in the United States, and the demand for skilled professionals in this field. In addition, the Petitioner provided articles and reports discussing the role of entrepreneurship in job creation and economic development, U.S.-Brazil economic and trade relations, the financial- and tax-related complexities of doing business in Brazil and Latin America, and the economic benefits of international trade and foreign direct investment in the United States. This evidence supports the Director's determination that the Petitioner's proposed endeavor to provide legal services to domestic and international businesses has substantial merit.

However, 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" and its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. Therefore, while we recognize the role of legal consultants in assisting businesses to maximize profitability, the Petitioner's intent to work in this field alone is not sufficient to establish the national importance of her proposed endeavor. In *Dhanasar*, we emphasized that "we look for broader implications" of the specific 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." 26 I&N Dec. at 889. 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 asserts that her proposed endeavor will have a substantial economic effect on underserved and underutilized regional economies, noting that her firm's headquarters and four future branch locations would all be located in areas of Massachusetts the U.S. Small Business Administration has designated as "HUBZones."³ The Petitioner has not offered sufficient evidence that her business, which had not yet been incorporated or secured physical premises, will have offices in one or more HUBZones. Further, she explicitly stated that her proposed endeavor would not participate in the HUBZone program and would not be eligible to do so. It appears the Petitioner may have intended to equate a designated HUBZone with an "economically depressed area," but the record does not support a conclusion that this is an equitable comparison. While the business plan projects the firm's employment of up to 41 workers at five locations within five years, the Petitioner has not established that this addition to the workforce in any of the claimed HUBZone regions would be of sufficient significance to rise to the level of national importance. The Petitioner has not shown her endeavor has significant potential to employ U.S. workers or that the specific proposed endeavor would offer a region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue.

On appeal, the Petitioner broadly maintains that her proposed endeavor will not only directly employ U.S. workers and contribute tax revenue to the U.S. economy but will also "have multiple positive

³ Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized business zones, with a goal of annually awarding at least 3% of federal contract dollars to HUBZone-certified companies annually. See "HUBZone Program," <https://www.sba.gov/federal-contracting/contracting-assistanceprograms/hubzone-program>.

effects on the U.S. marketplace, thus enhancing business operations on behalf of the nation and contributing to a streamlined economic landscape.” She further asserts that the services her company provides will generate “substantial ripple effects upon key legal activities,” will be “a vital aspect of U.S. legal operations and productivity,” and will contribute to “a revenue-enhanced business ecosystem.” These statements mirror her earlier claims that she is “due to play a key role in the United States’ economic recovery,” and that her work will “enhance revenues for the U.S. economy at large.”

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. While any increased business activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the economic activity resulting from her business would rise to the level of having regional or national economic impacts. The burden is on the Petitioner to establish that the economic effects of her proposed endeavor are “substantial.” She did not provide specific plans, projections of indirect economic benefits, or other sufficient evidence to explain how her company’s activities will have broader implications in the field that rise to the level of national importance or that its activities would impact the field beyond the company and its clients. Therefore, despite her claims that her proposed activities will result in a “streamlined economic landscape” throughout the United States, the Petitioner does not offer an evidentiary basis for her assertion that the “ripple effects” of her proposed endeavor would have such far-reaching results or would otherwise reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. See *id.* at 890.

In her personal statements and appellate brief, the Petitioner has placed considerable emphasis on her academic qualifications, professional experience, and the fact that she is well-versed in the legal and business environments in Brazil. The record contains ample supporting documentation of her academic qualifications and employment experience including letters from her colleagues and partners that praise her abilities and expertise in the fields of law and business. While important, the Petitioner’s expertise acquired through her academic and professional career relates to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar*’s first prong. A determination regarding the claimed national importance of a specific proposed endeavor generally cannot be inferred based on the Petitioner’s past achievements, just as it cannot be inferred based on general claims about the importance of a given field or industry.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from a university professor in the marketing field. In addressing the first prong of the *Dhanasar* framework, the author discusses the Brazilian economy and explains the current market challenges for foreign companies doing business in Brazil. The letter states that U.S. companies doing business or planning to do business in Brazil “would benefit from the expertise and skills” of the Petitioner as she has “an exceptional track record in business and commerce in the legal and customer service industries in Brazil.” The professor concludes that the Petitioner’s work would be in an area of substantial merit and national importance, but does not address her business plan, the specific proposed endeavor, and its prospective potential impact. Rather, most of the letter’s discussion of the first prong of the *Dhanasar* analysis simply provides background information about Brazil’s economy, business, and trade environments.

We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

While the Petitioner's evidence shows how her proposed endeavor stands to positively impact her business clients, it does not demonstrate how the endeavor will have a broader impact consistent with national importance. Accordingly, the Petitioner has not established that her proposed endeavor meets the first prong of the *Dhanasar* framework.

Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve her remaining arguments concerning her eligibility under the remaining prongs of the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.