



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

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

In Re: 28456171

Date: NOV. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a quality systems specialist, 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 the record did not establish that the Petitioner's endeavor would have national importance. 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.¹ 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 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

¹ The Director concluded that the Petitioner qualifies for the EB-2 classification as an advanced degree professional, which the record supports.

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 first prong of the *Dhanasar* test, substantial merit and national importance, focuses on the specific endeavor that the Petitioner proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. When determining whether a proposed endeavor would have national importance, we examine the specific impact of that proposed endeavor. *Id.* For example, an endeavor may qualify if it has national implications within a particular field, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.*

The Petitioner states that her endeavor will be to work as an “expert quality management systems (QMS) consultant for American businesses throughout the U.S.” The Director found that while this endeavor has substantial merit, the Petitioner did not submit sufficient evidence to establish how its impact would extend beyond its clients to have national importance. Therefore, the Director concluded that the Petitioner does not meet the first prong of the *Dhanasar* test or qualify for a national interest waiver.²

On appeal, the Petitioner submits a brief contending that her endeavor will have national importance because it “has the potential to improve industry performance across various sectors” and has “potential prospective impact on the national economy.” Upon review, the Petitioner has not overcome the Director’s denial ground, for the reasons below.

An endeavor may have national importance if it has national implications in a specific field, such as those resulting from certain improved manufacturing processes or medical advances. *Id.* The Petitioner states on appeal that “[e]nsuring quality and adherence to regulation not only helps businesses to avoid the setbacks and monetary losses associated with product recalls but also promotes consumer safety,” noting that recalled products in industries such as drugs, food, and electronics can cause illness, injury, and death, as well as exacting a heavy economic toll. While we acknowledge the importance of quality management in these industries, this relates to the endeavor’s merit, which is a separate consideration under *Dhanasar*. The relevant question when determining an endeavor’s national importance is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Id.*

For example, 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. Here, the record similarly does not establish that the Petitioner’s endeavor will affect product recalls or safety on a nationally important scale.

As an example of her endeavor’s impact, the Petitioner resubmits a letter from a client company, which states that the Petitioner has assisted in “improving the customer services process” and “[g]athering

² The Director did not provide any analysis of whether the Petitioner meets the second or third prongs of the *Dhanasar* test.

documents from our suppliers and related activities . . . to assure that they comply with our requirements and needs in order to implement effective quality systems for the company.” The letter further states that in the future, the Petitioner will work on automating their order placement process and “[c]ompleting and improving our quality management system documents.” When describing the impact of the Petitioner’s work, the letter states that it has “undoubtedly improved the efficiency of our processes and reduced our product returns and waste.”

First, we note that while this client is a food company, there is no indication in the letter that the Petitioner’s work has had or will have any relationship to food safety. The letter does not specify what suppliers the Petitioner gathered documents from, what “requirements and needs” those documents implicated, or what types of quality management systems the petitioner’s work will involve in the future. Furthermore, when evaluating an endeavor’s potential impact, we look for broader implications. *Id.* at 889. Here, there is insufficient information about the size and prominence of the client company to establish that the Petitioner’s work for them has the potential to impact the broader food industry on a national level.

The remainder of the record also does not document how the impact of the Petitioner’s work will extend beyond her clients to have broader implications. The Petitioner’s business plan indicates her company will target small businesses as customers, and that by the end of its fifth year of operations, it will have 15 long-term clients. She has not provided documentation specifying how her work for 15 small companies is more likely than not to impact the food industry, or any other industry, on a national level. *Matter of Chawathe*, 19 I&N Dec. at 376 (explaining that the “preponderance of the evidence” standard requires petitioners to submit relevant, probative, and credible evidence to show the fact to be proven is “probably” true). The Petitioner therefore has not shown how her endeavor will potentially lead to an improvement or innovation in her field that rises to the level of national importance. *Matter of Dhanasar*, 26 I&N Dec. at 889-90.

Similar concerns apply to the Petitioner’s claims regarding her endeavor’s economic impact. An endeavor that has significant potential to employ U.S. workers or have other substantial positive economic effects, particularly in an economically depressed area, may be considered to have national importance. *Id.* at 889. The Petitioner’s business plan states that in its fifth year of operations, her company will employ two to three workers other than herself, have \$360,000 in revenues, and save its clients \$839,362 in costs. The record also contains materials from the Economic Policy Institute (EPI) which state that every 100 direct jobs created in the professional, scientific, and technical services industry lead to the creation of 418.3 indirect jobs.³ Therefore, according to the EPI calculation, if the Petitioner’s company creates three to four full-time jobs, it would lead to the creation of 12.5 to 16.7 indirect jobs. However, the record does not examine these figures in the context of the local, state, or national economy, and so does not establish that the company’s business activity would constitute a significant economic benefit to the United States, Florida, or any economically depressed region through employment levels, business activity, or trade, such that it would rise to the level of national importance.

³ The cover letter the Petitioner submitted with this material states that every 4.3 direct jobs in the industry lead to the creation of 15.3 indirect jobs. This appears to be derived from the EPI finding that every \$4.3 million in final demand in the Petitioner’s industry leads to 15.3 indirect jobs. As the Petitioner has not established what amount of final demand her company will generate, we will instead refer to the EPI statistics regarding indirect jobs created per 100 direct jobs.

We further note that the Petitioner does not provide an adequate basis or supporting evidence for the business plan's projections of the company's expenses. For example, while the plan states that the company will operate virtually in its first year and will "open a physical office space" in its second year of operations, the second-year budget does not account for rent and states that utility expenses will be identical to those in the first year. No explanation is provided for how the company will obtain a physical office space with no rental costs and no utility expenses beyond those required for a company operating virtually.

Where there are inconsistencies in the evidence, it is the Petitioner's burden to resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has not done so here, and has not provided sufficient probative, relevant, and credible documentation to establish the scope of her endeavor's economic impact. *Matter of Chawathe*, 19 I&N Dec. at 376. As such, she has not established that her endeavor will generate the kinds of "substantial positive economic effects" contemplated by *Dhanasar*. *Matter of Dhanasar*, 26 I&N Dec. at 890.

Finally, we acknowledge the petition's documentation of the Petitioner's professional certifications and accomplishments. However, these factors relate to the second prong of the *Dhanasar* test, which is concerned with the Petitioner's ability to advance her proposed endeavor. They do not establish what potential impact the endeavor would have. The Petitioner therefore has not demonstrated that her proposed endeavor would be nationally important.

III. CONCLUSION

Because the Petitioner has not established her eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the other two prongs and hereby reserve those 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 did not otherwise meet their burden of proof).

The Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.