



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

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

In Re: 28880762

Date: NOV. 20, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a marketing consultant, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for the EB-2 classification and 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.

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. *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*, 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).

- 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

For the reasons discussed below, we agree with the Director that the Petitioner has demonstrated substantial merit but not the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.²

The Petitioner indicated on Form I-140, Immigrant Petition for Alien Workers, that her proposed employment is a marketing consultant. In the initial filing, the Petitioner described her proposed endeavor as working “as a design and marketing specialist, [specializing] in consumer behavior” and developing marketing programs for small businesses. The Petitioner did not provide further details on the type of companies that she intended to work with, nor did she specify a geographic location in which she would work. Instead, the Petitioner reiterated that she “would like to continue to provide her design and marketing expertise to companies within the United States” and “bring her unique combinational knowledge in design, consumer behavior, and retail experience to a company within the U.S.” The Petitioner’s personal statement summarized her previous work experience and described her commitment to the field of marketing but did not address her specific proposed endeavor.

The Director stated in the request for evidence (RFE) that the Petitioner did not provide a detailed description of her proposed endeavor or sufficient documentary evidence demonstrating the endeavor’s substantial merit and national importance. In response to the RFE, the Petitioner clarified that her endeavor is to operate her own marketing agency, [REDACTED]. The Petitioner also introduced a business plan stating that her company will “provide a variety of tailored, professional digital and traditional marketing services to small- and medium-sized U.S. businesses” and its first office will be established in [REDACTED] with additional offices opening in [REDACTED].

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 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.

On appeal, the Petitioner claims national importance of her endeavor as an entrepreneur by reprising the financial and staffing projections previously included in the business plan. The Petitioner asserts that the Director “did not fully analyze the provided evidence of [the Petitioner’s] business plan” and “did not consider all the benefits of [the Petitioner’s] endeavor including the creation of direct and indirect jobs, revenue growth for small and medium-sized businesses, and the increase in paid taxes.”

² The Director also concluded that the Petitioner did not establish eligibility under the second or third prong of *Dhanasar*.

We reviewed the Petitioner's business plan. The business plan makes various projections that the company will purportedly achieve in five years, such as paying \$672,135 in taxes to the U.S. government, increasing direct sales of marketing consulting services from \$202,800 to \$1,248,000, and providing a total payroll of \$741,330 through hiring 13 employees. However, the plan does not provide sufficient detail of the basis for these projections, or adequately explain how these sales and staffing targets will be realized. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The business plan alone does not sufficiently show that the Petitioner's company will have an impact on the marketing industry or the U.S. economy at a level commensurate with national importance. In addition, the record does not indicate that the location of the business and its proposed operations is an economically depressed area.

The Petitioner also submitted offers of employment from three different companies. However, the job offers do not show that working as a marketing specialist for any of these companies would reach the level of "substantial positive economic effects," as contemplated in *Dhanasar*. *Dhanasar*, 26 I&N Dec. at 890. The offer letters do not corroborate the nature or numerosity of clients or clients' projects to support the claims that the Petitioner's work as a marketing consultant or specialist will have substantial economic impact beyond the clients or employers that she will serve.

With the appeal, the Petitioner submits as evidence an article on entrepreneurs and their impact on economic growth. The record also contains numerous articles and reports on the importance of marketing and digital marketing, the value of small businesses, the impact of COVID-19 on advertising and marketing campaigns, and shortage of marketers. 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." *Id.* at 889. We acknowledge the importance of entrepreneurship as well as the value of marketing industry and marketing careers, but these articles do not address specific evidence of benefits and advances her proposed endeavor will make in the marketing field.

In *Dhanasar*, we also 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, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* The record contains work experience letters and recommendation letters from her co-workers, friends, and family members. Much of this evidence shows the Petitioner's accomplishments in her past employment or her expertise in marketing. We find that these letters are insufficient in describing the Petitioner's specific future endeavor and its broad impact on the marketing industry. In addition, the Petitioner's knowledge, skills, and experience in the field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890.

The Petitioner submitted an expert opinion that includes an analysis of the national importance of the Petitioner's proposed endeavor. However, [REDACTED] an adjunct associate professor of marketing and management at [REDACTED] University, generally discusses the global management consulting market and the importance of marketing in the economy, instead of addressing the Petitioner's specific endeavor. [REDACTED] further states: "it is critical for U.S. companies doing business or planning to do business abroad to benefit from [the Petitioner's] expertise as a

marketing professional, with an intimate and first-hand knowledge of the Brazilian business arena.” However, the Petitioner has not stated, either in her personal statements or letters through her counsel that her proposed endeavor includes collaborative works between U.S. and Brazilian companies, or that she actively targeting U.S. companies that does business or plans to do business in Brazil. Where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. *See Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm’r 1988).

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. *Id.* at 893. The Petitioner has repeatedly made broad assertions that her endeavor “will expand the American workforce by creating jobs and contributing to the training of other U.S. professionals, while generating revenue for U.S. companies,” but the record lacks sufficient information or evidence regarding any projected U.S. economic impact attributable to her future work as a marketing consultant or specialist. Accordingly, we find the record does not establish the Petitioner’s proposed work is of national importance.

Because the Petitioner has not met the first prong of the *Dhanasar*’s analytical framework, we decline to reach whether she meets the remainder of the second and third prongs under the *Dhanasar* framework. It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. Furthermore, as we find that the record does not establish that the Petitioner merits a national interest waiver, we reserve our opinion regarding whether the Petitioner satisfies the second-preference eligibility criteria and decline to address the Petitioner’s arguments raised on appeal regarding this issue.³ *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”); *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 find 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.

³ With the appeal, the Petitioner submitted three articles on the role of psychology in the workplace and the marketing field, but we will not evaluate these articles as they pertain to the issue of the Petitioner’s qualification for the EB-2 classification which we will reserve on appeal.