



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

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

In Re: 28962799

Date: NOV. 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an occupational health and safety entrepreneur, seeks classification as a member of the professions holding an advanced degree. *See* 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. *See* 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 although the Petitioner qualifies as an advanced degree professional, the record did not establish that a waiver of the job offer requirement is 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.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. As noted above, the Director concluded that the Petitioner qualifies as an advanced degree professional. Based upon the Petitioner's doctor of medicine degree from the Dominican Republic, and the evidence in the record that this is equivalent to a first professional degree in the United States, we agree.

Once a petitioner demonstrates eligibility for the classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of

discretion,¹ grant a national interest waiver if the petitioner demonstrates that: 1) the proposed endeavor has both substantial merit and national importance; 2) the individual is well-positioned to advance their proposed endeavor; and 3) on balance, waiving the job offer requirement would benefit the United States. The Petitioner proposes to establish a consultancy business in the United States to improve occupational health and safety standards and ensure compliance with health and safety regulations. The Director found that the Petitioner established the substantial merit of the proposed endeavor, but did not establish the endeavor's national importance, that she is well-positioned to advance it, or that, on balance, waiving the job offer requirement would benefit the United States.

As to whether the Petitioner established the national importance of the endeavor, the Director discussed the Petitioner's business plan in detail and concluded that it did not demonstrate that the endeavor stands to have substantial positive economic effects. The Director also discussed the articles and reports submitted but noted that they relate in general to occupational health and safety and other related topics, and therefore did not establish the endeavor's national importance. The Director concluded that, although the evidence shows that the Petitioner intends to provide consultancy, training, and advisory services and that the company has the potential to grow and create jobs, the record did not establish that the benefits would reach beyond the company to benefit the economy or the broader field.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Id.* at 890.

On appeal, the Petitioner asserts that the Director did not sufficiently consider all the elements of the proposed endeavor in the national importance determination. The Petitioner claims that although establishing her company is an "essential aspect" of her proposed endeavor, it is only one element of the endeavor. The Petitioner claims that the Director considered only the potential economic impacts of establishing a business and did not consider that the business plan also "explained that she will specifically offer comprehensive consultancy, training, and advisory services in the field of occupational health and safety." Therefore, the Petitioner asserts, the endeavor "has implications in improving the occupational health and safety of U.S. workers." The Petitioner also contends that the Director did not analyze "any of the other evidence submitted or address any of the points made in the filing." The Petitioner notes that USCIS regulations require that a denial decision explain the specific reasons for the denial and asserts that the Director did not sufficiently do so here.

First, we are unpersuaded by the Petitioner's assertion that the Director did not consider all the elements of the proposed endeavor. The Petitioner does not sufficiently explain on appeal what aspects of her proposed endeavor the Director overlooked, and we note that the Director specifically acknowledged that the Petitioner seeks to provide consultancy, training, and advisory services with the aim of improving worker safety. Moreover, upon de novo review of the record we generally agree

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).

with the Director's characterization of the proposed endeavor. If the Petitioner's contention is that the Director did not accept her unsupported claim that the endeavor will broadly improve worker safety, then we note that the Petitioner bears the burden of proof to establish eligibility, *Matter of Chawathe*, 25 I&N Dec. at 375-76, and we conclude that additional documentary evidence is needed to demonstrate this claim.

We also disagree with the Petitioner's assertions that the decision is insufficiently detailed and that the Director did not sufficiently consider the evidence. Rather, the Director's decision cites to specific information in the record and includes findings that are well-supported by the language of *Matter of Dhanasar*. For example, in an attempt to support this claim the Petitioner specifically points to an Occupational Safety and Health Administration (OSHA) report about the economic costs of workplace injuries and an executive order on protecting worker health and safety, both of which the Petitioner asserts establish the endeavor's national importance. But the Director specifically discussed the articles and reports submitted and concluded that they relate to the issue of worker health and safety overall, and therefore do not establish the endeavor's national importance.

The Petitioner also attempts to analogize the media articles in the record with the evidence presented in *Matter of Dhanasar*, stating that the petitioner in *Dhanasar* also used media articles to establish national importance. But in *Dhanasar*, the media articles discussed the national importance of the petitioner's specific proposed endeavor—to continue research into the design and development of hypersonic propulsion systems. *Matter of Dhanasar*, 26 I&N Dec. at 892. The record also included “probative expert letters from individuals holding senior positions in academia, government, and industry” that described the national importance of this specific research endeavor. *Id.*

The same is not true here. While the articles and reports here help demonstrate the importance of worker safety in general, they do not demonstrate that the Petitioner's proposed endeavor—to establish a business and offer consultancy and advisory services related to worker safety—has national importance. We agree with the Director that 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 “specific endeavor that the [noncitizen] proposes to undertake.” *See id.* at 889.

Overall, we conclude that the Petitioner's assertions do not overcome the Director's findings or establish the national importance of the proposed endeavor. Although the Petitioner claims on appeal that the Director did not sufficiently or properly analyze the evidence in the record, these claims are not supported by the record.

Because the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prongs. *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 the applicant is otherwise ineligible).

ORDER: The appeal is dismissed.