



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

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

In Re: 28946136

Date: NOV. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a self-employed businessperson in the field of real estate, 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, concluding the record did not establish: (1) the national importance of the proposed endeavor; (2) the Petitioner is well positioned to carry out her endeavor; or (3) that it would be in the United States' interest to waive the requirement of a labor certification. 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's 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, 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:

- 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

A. Advanced Degree Professional

The Director determined the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional; however, neither the request for evidence (RFE) nor the decision contained analysis of this issue. Upon de novo review, we withdraw the Director's finding on this matter and instead conclude the Petitioner has not established eligibility for the EB-2 classification as an advanced degree professional.²

Although the Petitioner submitted sufficient evidence to establish that she earned the foreign equivalent of a U.S. bachelor's degree, the evidence supporting her five years of progressive post-baccalaureate experience is insufficient. The Petitioner's accountant authored a letter stating the dates when the Petitioner began three different business activities. The Petitioner has not explained her relationship to the accountant, but the documents suggest he is her employee. Documents from a paid employee, while not without weight, do not appear to be objective. The accountant's claims are not corroborated with independent evidence, such as client contracts, federal tax documents, or paid invoices matched with bank statements. As such, we conclude the accountant letter has little probative value. Further, the accountant does not explain what experience the Petitioner gained by engaging in the three business activities he listed, nor does he provide end dates for her employment.

We reviewed the Petitioner's business ownership documents and acknowledge she is a part-owner and shareholder of a foreign business. While these documents demonstrate ownership, they do not establish the Petitioner's work experience. The Petitioner's recommendation letters from former colleagues add context to the projects on which the Petitioner may have worked in the past, but the authors appear to have neither the authority to write on behalf of the referenced company nor knowledge of the Petitioner's personnel records such that we could conclude the recommendation letters are employer letters in compliance with the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B).

For these reasons, we conclude the evidence is insufficient to establish the Petitioner has at least five years of progressive post-baccalaureate experience. As she has not established her eligibility for the underlying EB-2 classification, she has not established eligibility for a national interest waiver.

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).

² The Petitioner has not asserted that she qualifies as an individual of exceptional ability. Therefore, we will not discuss whether the evidence establishes her eligibility under any of the six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

B. National Importance

The appeal may be dismissed on the underlying classification issue alone; nevertheless, we provide additional analysis of the Petitioner's eligibility under the first Dhanasar prong. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The first prong, substantial merit and national importance, focuses on the specific endeavor the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, 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 Petitioner's endeavor is to develop affordable, sustainable housing solutions using adapted shipping containers through her company, [REDACTED]. She will sell the repurposed shipping container houses in Texas but plans to expand her territory into Utah and Florida in the future. The record contains numerous industry articles on the shortage and importance of affordable housing, the social impacts of affordable housing, its ability to bolster economic growth, and how affordable housing is the subject of national initiatives. We agree with the Director that the evidence establishes the substantial merit of the Petitioner's proposed endeavor.

Regarding the endeavor's national importance, the Petitioner stated that her endeavor will provide affordable homes, lower the estimated number of unhoused persons, and benefit the environment. Specifically, she explained:

My endeavor is directly in line with and in furtherance of new legislation across several states of the country, [s]pecifically new regulations regarding the development of sustainable future with affordable houses. My endeavor will help solve a great social problem related to the lack of a home, which is a basic need in the life of a human being. Helping to obtain a home at less than half of the cost of an average traditional home in the United States, of high quality, durability and with the required construction standards in the regulation of the cities of each state of the country serves to benefit both of the country and its citizenry. I further aim to reduce the prevalence of homelessness in the country by and through my endeavor.

As an indirect benefit, my endeavor will give jobs to American families which helps combat unemployment and contributes to the family income of American families. Finally, my endeavor reduces the pollution of the ports, seas due to the use of shipping containers discarded mostly in American ports, the consumption of wood and energy is reduced, which benefits the planet.

(errors in original). She offered evidence explaining how affordable homes reduce intergenerational poverty and increase economic mobility, as well as that Texas alone has 6,300 unhoused persons. In addition, the evidence indicates that the lack of affordable housing in cities contributes to the number of unhoused persons, while it also forces workers to live far away from workplaces and job opportunities. The Petitioner's business plan states that by year five, she will have hired 18 direct employees and built 106 housing units from shipping containers. The plan also stated that in years

five to ten, her business will generate \$471,341 in tax revenue. These projections, while commendable, do not demonstrate the Petitioner's business will operate on a scale commensurate with national importance.

The Petitioner asserted her endeavor will lower the number of unhoused people and provide housing in places that lack affordable homes. However, she has not established how the unhoused will be able to purchase her homes even if she sells them at an affordable price. Additionally, it is not apparent how the houses she creates will enable workers to live near workplaces and job opportunities in the city. Specifically, the Petitioner has not demonstrated how a shipping container could be placed in a city when available real estate space is already scarce and sold at a premium. The Petitioner provided evidence indicating that other companies, such as the [REDACTED] offer similar solutions in Texas; however, she has not explained how her endeavor is better, different, or costs less than the goods and services another company already provides. Moreover, she has not offered information regarding the [REDACTED] impact or scale such that it illustrates the impact her proposed endeavor could create and thus its national importance. While we acknowledge that a petitioner may establish eligibility even if their endeavor does not succeed, the Petitioner must establish that her endeavor is a viable option, at least insofar as it has the possibility of creating the claimed broader implications.

As the Director explained, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, USCIS must focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. Accordingly, the importance of the industry and profession is not necessarily sufficient to establish the national importance of the Petitioner's specific endeavor. The industry articles and reports demonstrate the importance of affordable housing and sustainable green construction, but we nevertheless conclude this is insufficient to establish the endeavor's national importance.

The recommendation letters praise the Petitioner's personal and professional qualities. They provide examples of her career accomplishments, including the success she brought to large and valuable projects. The Petitioner offered these letters to suggest that her past impact in similar work demonstrates the future impact her proposed endeavor will have; however, the Petitioner's accomplishments relate to the results she achieved on specific projects and for specific employers/clients, rather than indicate broader implications in the field. The letters state the Petitioner changed the commercialization model and that others adopted her strategies to benefit projects; however, the authors do not offer details regarding her models and strategies sufficient to conclude the Petitioner contributed to the affordable real estate field overall. While we understand that changing the leasing terms for commercial units may have triggered sales, the Petitioner has not explained how this affected the field such that we can conclude her past work supports a finding of the national importance of her endeavor.

On appeal, the Petitioner asserts the Director conflated the Petitioner's employment with her proposed endeavor, but she does not explain the effect of such conflation. Therefore, even if we agree that the Director improperly conflated the Petitioner's employment with her endeavor, this would not establish how doing so disadvantaged her. In other words, the Petitioner has not explained how the conflation diminishes the Director's analysis of the endeavor's national importance.

The Petitioner asserts the Director did not offer a meaningful review of the evidence and abused their discretion in failing to address all evidence, citing *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) and the USCIS Policy Manual in support. Additionally, the Petitioner contends the Director ignored ample objective and testimonial evidence submitted in the initial filing and in the RFE response. The Director referenced the Petitioner's statements that her endeavor will "solve a great social problem related to the lack of a home," "give jobs to American families which helps combat unemployment and contributes to the family income of American families," and "reduce the prevalence of homelessness in the country," and determined the evidence did not sufficiently support such statements. As our above analysis demonstrates, we agree.

The court in *Buletini* did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the *Buletini* decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); see also *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). We conclude that although the decision does not individually analyze each piece of evidence, it reflects the Director's reasoned consideration of the evidence. As our above analysis demonstrates, the Petitioner has not provided sufficient evidence or arguments to overcome the Director's determinations.

III. CONCLUSION

The record establishes neither that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional nor the national importance of the proposed endeavor. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of eligibility under the remaining prongs outlined in *Dhanasar* would serve no meaningful purpose.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under 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).

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.