



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

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

In Re: 28282528

Date: OCT. 2, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a data analytics specialist, 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 EB-2 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 qualified for classification as a member of the professions holding an advanced degree, but that she 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.

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. 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:

- The proposed endeavor has both substantial merit and national importance;

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 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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to her proposed endeavor, the Petitioner initially indicated that she intends “to continue in the field of Data and Business Analytics in the United States.” She discussed her employment with [REDACTED] [REDACTED] “as a product marketing manager, focusing on their customer analytics.” The Petitioner further stated: “I analyze sets of data . . . and interpret this data, giving suggestions and detailed reports for marketing strategies. A major part of my job is determining purchase probability, purchase choice probability, and purchase quantity with diverse data points.” She also asserted that she has “met with highly ranked professionals in the field such as the Global Marketing Development and Strategy Director at Microsoft UK, and the Director of Marketing Analytics at Microsoft, and others, to discuss the digital transformation they are making as a company” In addition, she mentioned an “opportunity to join their team.”²

In response to the Director’s request for evidence (RFE), the Petitioner provided further information about her proposed endeavor:

I am currently working as Business Analyst at [REDACTED] Company of [REDACTED] [REDACTED] where I perform duties such as assist in the development of existing equipment dashboards; retrieve and automate data from field assets into a database; assist with the creation, redesign, and management of a mobile application; and assist in the creation of reports using Power BI.

Apart from my exceptional abilities as a Business and Data Analytics Specialist, I will set up a business to respond to the industry challenges around automation, big data, and overall digital transformation. [REDACTED] will be located in Seattle, Washington [REDACTED] will be a consultancy with the mission to help small businesses and startups in every industry to stay competitive in local and international markets using the power of data. Our goal will be to improve marketing efforts for our clients, helping them gain leverage against competitors by informing their product positioning, determining their product purchase probability, purchase price probability purchase quantity of their existing and potential customers, and more.

The Petitioner submitted the business plan for [REDACTED] This business plan includes industry and market analyses, information about her company and its services, financial forecasts and

² The record includes documentation of a job offer to the Petitioner from Microsoft Corporation for the position of Market Research Manager.

projections, marketing strategies, a discussion of the Petitioner's work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipated that her company would employ one person in year one, three people in year two, four people in year three, eight people in year four, and ten people in year five, but she did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, while her plan offers revenue projections of \$240,400 in year one, \$518,000 in year two, \$694,000 in year three, \$1,192,000 in year four, and \$1,494,000 in year five, she did not adequately explain how these sales forecasts were calculated.

The record includes articles discussing the ways a data scientist can add value to business, the benefit of data-driven decisions to digital business transformation and success, and the advantages of data-driven decision making. In addition, the Petitioner provided information about the Biden-Harris Administration's actions to attract science, technology, engineering, and mathematics (STEM) talent and to strengthen the U.S. economy and competitiveness. The record therefore demonstrates that the Petitioner's proposed work has substantial merit.

Furthermore, the Petitioner provided letters of support from J-N-, J-R-, S-A-, S-T-, K-G-, W-F-, and M-B- discussing her academic achievements and data analytics capabilities and experience. The Petitioner's education, skills, knowledge, and prior work in her field, however, 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 issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner also submitted an "Expert Opinion Letter" from V-L-, Associate Professor of Marketing at [REDACTED] University, in support of her national interest waiver. V-L- contended that the Petitioner's proposed work is of national importance because her generic occupation of data analytics specialist and the industry in which she works stand to contribute to our nation's societal welfare, economic interests, and STEM initiatives. For example, V-L- asserted the Petitioner's "endeavor has substantial benefits for the United States' information technology (IT) sector. Data is increasingly more crucial in an era of digital society. It is a valuable tool that gives insight into business stability and development opportunities during a problematic period of doubt." The issue here, however, is not the national importance of the field, 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. The letter from V-L- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work as a business and data analyst and consultant offers broader implications in her field, enhancements to U.S. societal welfare, or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of her proposed endeavor. The Director stated that the Petitioner had not demonstrated that her undertaking stands to have broader implications in the field, significant potential to employ U.S. workers, or other substantial positive economic effects.

In her appeal brief, the Petitioner argues that information from the U.S. Bureau of Labor Statistics indicates that "employment of data scientists is projected to grow 36 percent from 2021 to 2031, much

faster than the average for all occupations. Employment growth for data scientists is expected to stem from an increased demand for data-driven decisions.” She further states: “The volume of data available and the potential uses for that data will increase over the decade. As a result, organizations will likely need more data scientists to mine and analyze the large amounts of information and data collected.” The Petitioner also points to the letter from V-L-, who asserted that the Petitioner “can help address the shortage of data analytics professionals by sharing the knowledge she accumulated throughout years of academic and practical experience.” We are not persuaded by the claim that the Petitioner’s proposed endeavor has national importance due to the projected shortage of professionals in her industry. Here, the Petitioner has not established that her proposed endeavor stands to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner contends that her proposed work offers “significant economic and societal impact in the U.S. national interest.” She argues that “her endeavor will translate into economic benefits for the United States” and that it has “national and global implications within the field” and “significant potential to employ U.S. workers.” The Petitioner also claims that her undertaking extends beyond her proposed company and affects the U.S. economy.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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.” *Id.* 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.

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 the Petitioner’s statements reflect her intention to provide valuable data analytics services for her U.S. employer and her proposed company’s clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. 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. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her employer or her future company and its clientele to impact the IT industry, the data analytics field, the U.S. economy, or U.S. societal welfare more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not demonstrated that her company’s future staffing levels and business activity stand to provide substantial economic benefits in Washington or the United States. While the Petitioner claims that her company has growth potential, she has not presented evidence indicating that the benefits to the regional or national economy resulting from her undertaking would

reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner has asserted that her endeavor “has significant potential to employ U.S. workers,” she has not offered sufficient evidence that the area where her company will operate is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity.

For the aforementioned reasons, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. 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”); 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 reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.