



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

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

In Re: 28052740

Date: OCT. 02, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an organizational development 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 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 that although the Petitioner established her eligibility for EB-2 classification as a member of the professions holding an advanced degree, she did not demonstrate 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. Next, a petitioner must then demonstrate 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

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).

- On balance, waiving the job offer requirement would benefit the United States.²

II. ANALYSIS

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.³ Therefore, the remaining issue before us on appeal is whether the Petitioner has established that a discretionary waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The record supports the Director's determination that the Petitioner's proposed endeavor to assist companies with optimizing their supply chain and logistics operations has substantial merit.

On appeal, the Petitioner maintains that the Director did not give due regard to her recommendation letters; expert letter; articles demonstrating the national importance of her proposed endeavor; and evidence of her professional experience and accomplishments. For the reasons provided below, we agree with the Director's determination that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.⁴

As it pertains to the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. In a cover letter accompanying the petition, counsel for the Petitioner indicated that she intends to continue to work as a "Supply Chain specialist with emphasis in management and logistics." Specifically, she "will provide her professional knowledge to both private and public organizations located within the U.S. Critical Oil Industry Supply Chain," which would "be eager to have h[er] in leading positions in their supply chain corporations." In her concurrently filed Form I-485, Application to Register Permanent Residence or Adjust Status, the Petitioner indicated employment in Caracas between 2007 and December 2021 as a management control leader for [REDACTED]

In the request for evidence (RFE), the Director observed that the Petitioner did not provide specific insight as to what she intends to do in the United States, and requested a detailed description of the proposed endeavor so that the Director could evaluate her request for a national interest waiver under the *Dhanasar* framework. In response, the Petitioner submitted a professional plan in which she asserted for the first time that she intended to open and operate her own company, [REDACTED] which would be located in [REDACTED] Florida. She claimed, through counsel:

[REDACTED] is an independent supply chain consulting organization specializing in the design of warehousing, distribution, and fulfillment operations. The firm's client engagement includes large, prestigious, publicly traded companies as well as small and mid-sized privately held firms seeking to add value, reduce cost, assure quality, compress time, and achieve strategic advantage and tactical superiority.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The record establishes that the Petitioner holds the foreign equivalent of a bachelor's degree from an institution of higher education in the United States, and that she has at least five years of progressive, post-baccalaureate experience in her specialty. See 8 C.F.R. § 204.5(k)(3).

⁴ While we do not discuss each piece of evidence individually, we have reviewed and considered all evidence submitted in support of the Petitioner's claim that the proposed endeavor has both substantial merit and national importance.

[redacted] will help organizations overcome complex and mission-critical challenges in the transportation, storage, and distribution of products and services. We will support clients in a wide range of industries and geographies throughout the world and the United States.

On appeal, the Petitioner states she will continue to pursue her professional plan for [redacted] with the purpose of “providing supply chain and logistics services for U.S. based entities.” Although she initially proposed to provide services to organizations in the oil and gas industry by working “in leading positions in their supply chain corporations,” as the Director noted the Petitioner’s initial description of her proposed endeavor did not include plans to open her own company and operate that company as its director.

The Petitioner has not shown that working for a company to provide guidance on supply chain management and forming and managing her own company are the same endeavor. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. See 8 C.F.R. § 103.2(b)(1). In fact, [redacted] professional plan reflects a date after the issuance of the Director’s RFE.⁵ Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. For the reasons stated, we conclude that the Director did not err by basing the decision on the Petitioner’s initial proposed endeavor, which was to work as a supply chain management and logistics provider. Accordingly, we will not consider the Petitioner’s materially changed proposed endeavor of opening and operating her own business, [redacted]

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 foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner’s initial evidence discussed the importance of developing efficient approaches to supply chain management and logistics, the Petitioner must demonstrate the national importance of her specific, proposed endeavor rather than the importance of the occupation or the industry or field.

In *Dhanasar*, we 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.

We have also considered the Petitioner’s claims that there are shortages in the United States of supply chain professionals. She provided copies of articles from business and industry publications discussing the increasing labor and talent shortages in the supply chain and logistics field. The record also contains a government report on the U.S. government’s actions taken in light of manufacturing

⁵ The professional plan for [redacted] is dated October 8, 2022; the Director issued the RFE in July 2022.

and supply chain weaknesses that were exposed by the COVID 19 pandemic. Here, the Director concluded that the submitted government report and articles establish the Petitioner's endeavor has substantial merit. However, the alleged shortage of an occupation does not render her proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. The Petitioner has not suggested that her proposed endeavor would lessen the shortage of supply chain management and logistics workers on a scale rising to the level of national importance.

In addition, the Petitioner emphasized her "more than 14 years of experience in logistics processes." Similarly, in offering his expert opinion regarding the national importance aspect of the Petitioner's proposed endeavor, R-A-B- of [REDACTED] asserted that "the United States would greatly benefit from the experience and skills of an experienced manager and consultant like [the Petitioner], who has extensive knowledge and experience in vital areas of the country. . . ." The Petitioner's experience, skills, and abilities in her 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 issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong.

Moreover, 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. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner did not offer specific information and evidence to corroborate her assertions that the prospective impact of working as a supply chain management and logistics provider for an unidentified employer 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, the record does not show through supporting documentation how her specific employment services stand to sufficiently extend beyond her prospective employer(s), to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. The expert opinion letter from [REDACTED] offers little or no analysis of the specific proposed endeavor and its prospective substantial economic impact, and does not otherwise address the implications of the proposed endeavor on the larger field of supply chain management and logistics.

Finally, the Petitioner did not establish that her initial proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show any benefits to the U.S. regional or national economy resulting from her supply chain management and logistics provider position that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

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. Although the Director also concluded that the Petitioner had not established her eligibility under the second and third prongs of the *Dhanasar*

framework, detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve those issues and will dismiss the appeal as a matter of discretion.⁶

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated 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.

⁶ See *INS v. Bagamashad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).