



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

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

In Re: 28580581

Date: OCT. 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in commercial management, 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 Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, 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 because the Petitioner did not establish that her proposed endeavor has national importance and thus, she did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. at 884. Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *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).

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 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 discretion,¹ 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

The Director determined that the Petitioner was a member of the professions holding an advanced degree.² The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner states that she has more than 20 years of experience in sales of health insurance and commercial management. In 2020, the Petitioner formed her own company in the United States, [REDACTED] to provide insurance and wealth management products to U.S. citizens. She states that she intends to continue her career in her company as a financial and commercial consultant “provid[ing] guidance and direction in the areas of finance, business management, negotiation, sales forecasting, market and establishment of policies and programs for U.S. companies, individuals, and businesses that are in the financial, commercial and sales sectors for insurance, pensions and risk-free investments.”

With the initial filing the Petitioner submitted evidence of her education and experience, a personal statement describing her proposed endeavor and claimed eligibility for a national interest waiver, a business plan dated December 2020, recommendation and support letters, and an expert opinion letter. She also submitted industry reports and articles discussing the benefits of entrepreneurship and the important role of immigrant entrepreneurs in the U.S. economy.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish her eligibility for the national interest waiver. The Petitioner’s response to the RFE includes an updated personal statement and copies of evidence already in the record. She states that her endeavor is to help U.S. companies find investment opportunities that will benefit the United States on a national and global level, as follows:

National Level: Strategically manage and grow sales, partner ecosystem, product contracts, and partnership for U.S. companies nationwide to increase revenues, which will grow and flourish due to my Commercial Management expertise.

Global Level: Facilitate sales of financial products, negotiation of contracts and projects between the U.S., Latin America and Spanish and Portuguese speaking

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 record demonstrates that the Petitioner holds the equivalent of a U.S. bachelor’s degree awarded in 2005, followed by more than five years of progressive experience. See 8 C.F.R. § 204.5(k)(3)(i)(B).

countries such as Spain and Portugal. This will be marketed strategically and exclusively through my vast experience in Commercial Management.

The Petitioner's business plan anticipates that the company will employ 12 employees in its first five years. The plan states that the Petitioner will invest her own personal funds totaling \$20,000 in the first year and will reinvest \$20,000 of the company's profits in each of the following four years. Regarding financial predictions, the Petitioner's business plan predicts total revenue of \$4.6 million by its fifth year providing insurance and wealth management products through business units in Florida and Illinois.³

After reviewing the Petitioner's RFE response, the Acting Director determined that the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has substantial merit. However, she concluded that the Petitioner had not demonstrated that her proposed endeavor had national importance, that she was well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Acting Director stated that the Petitioner's business plan, although asserting that it would employ 12 individuals, "did not explain or support the business need for additional employees [or] sufficiently demonstrate how this amount of employees would constitute a significant potential to employ U.S. workers." The Acting Director further noted that the record did not include evidence to demonstrate how the financial predictions in the business plan would contribute to the national economy. The Acting Director also noted that the support letters in the record did not provide specific examples of how the Petitioner's work has influenced the industry or otherwise served as an impetus for progress in the field. The Acting Director further stated that the record did not demonstrate that the Petitioner's business will have a regional or national impact at a level consistent with having national importance, or that the Petitioner's work will have broader implications in his field of endeavor. Additionally, the Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of her prospective contributions to the United States, an urgent national interest in her contributions, the potential creation of jobs, or that her self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief and asserts that the Acting Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law." In her brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that she merits a national interest waiver.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such

³ The Petitioner's business is located in [redacted] Florida. The business plan states that by 2022 the business will open offices in [redacted] Florida and [redacted] Illinois, and includes maps of those areas from the U.S. Small Business Association's HUBZone Program. However, we note that the map of [redacted] is titled '[redacted]' and the map of [redacted] is of [redacted] Massachusetts, rather than any city in Illinois. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

as business, entrepreneurialism, science, technology, culture, health, or education.⁴ In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. 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 Id.* 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.

Although the Petitioner submits articles and industry reports describing the importance of entrepreneurship on economic growth, many of these reports are not specific to the field of commercial management.⁵ One report from The New England Council, titled “The New England Financial Services Industry: Around the Corner and Around the World,” does focus on financial management, an area within the Petitioner’s field of endeavor. However, the report is dated 2017, more than six years ago, and only focuses on New England, while the Petitioner’s proposed endeavor is in Florida. Additional reports discuss the achievements of immigrants as entrepreneurs but are not specific to the Petitioner’s field or the location of her proposed endeavor. When 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.” *See id.* at 889. Much of the Petitioner’s evidence relates to the importance of entrepreneurship generally, rather than her specific proposed endeavor. Even considering the articles, reports, and statistics collectively and in the totality of circumstances, we still conclude that they do not support a finding that her specific proposed endeavor has national importance.

The Petitioner also submits her business plan dated December 2020 to support the national importance of her proposed endeavor. As noted, to establish national importance, the Petitioner must demonstrate the proposed endeavor’s impact. 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.* at 889. Although the Petitioner states that her experience in commercial management will contribute to the U.S. economy, she has not supported these assertions with sufficient independent, objective evidence. The projections of the Petitioner’s company’s revenue and job creation as stated in the business plan are also unsupported in the record. Although the record does include the Petitioner’s company’s 2021 federal tax return, the return covers only the first year of the business and reflects only the Petitioner’s initial investment of \$20,000 with no additional income. Further, the tax return lists no salaries or wages paid, although the Petitioner’s business plan projected hiring six employees in 2021. The evidence does not suggest that the Petitioner’s skills differ from or improve upon those already available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner’s experience will reach beyond benefitting her own company and clients or have broader implications within the field of commercial

⁴ The Petitioner erroneously states on appeal that the Acting Director concluded that the Petitioner’s proposed endeavor “is not of substantial merit.” However, the Acting Director stated in the decision, “You submitted sufficient evidence to demonstrate that your proposed endeavor has substantial merit.” We agree that the Petitioner’s proposed endeavor has substantial merit.

⁵ While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

management. The record does not establish that her proposed endeavor stands to impact the field as a whole.

The Petitioner also submits an expert opinion prepared by [REDACTED] [REDACTED] University of New York, as well as recommendation letters from current and former employers praising the Petitioner's education, experience, past success, personal qualities, and the results she achieved. However, these qualities relate to the second prong of the *Dhanasar* framework, that the individual is well-positioned to advance their proposed endeavor, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner's specific endeavor has national importance under *Dhanasar*'s first prong.

We acknowledge that the expert opinion includes an analysis of the national importance of the Petitioner's proposed endeavor. In his analysis [REDACTED] states, "[The Petitioner's] expertise in this area is of substantial merit and national importance for U.S. companies doing business or planning to do business in Brazil." However, he does not elaborate on how U.S. business involvement in Brazil and Latin America will have a prospective impact on the United States, including the national or global implications on commercial management, the potential to employ U.S. workers, or the positive economic effects.

Additionally, we note that the Petitioner states in her personal statement, "Overall, my direct knowledge of marketing and sales will benefit any U.S. company that needs my professional experience in Consulting and Commercial Management that seeks to reach specific audiences in Brazil and Latin America." However, she does not describe how she intends to assist U.S. businesses seeking projects in Brazil or Latin America, as the expert opinion discusses. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

On appeal, the Petitioner relies upon the evidence she previously submitted and asserts that the Acting Director imposed a "stricter standard, and erroneously applied the law," and did not consider the evidence objectively. The Petitioner does not identify the Acting Director's standard or erroneous applications of law. Nor does the Petitioner identify which evidence was not considered. The Petitioner continues to rely upon the asserted merits of the services she will provide, her personal and professional qualities and achievements, and the importance of entrepreneurship. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs.⁶ *See INS v. Bagamasbad*, 429 U.S. at 25.

⁶ Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Acting Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in 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.

ORDER: The appeal is dismissed.

importance, that she was well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response and does not provide any new evidence. The Acting Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner met the three *Dhanasar* factors and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that she meets all of the three *Dhanasar* prongs.