



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

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

In Re: 28446346

Date: OCT. 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a construction manager and civil engineer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Once a petitioner demonstrates eligibility for the underlying 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 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 USCIS may, as matter of discretion², 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 Petitioner proposes to work as a construction manager for her new construction and civil engineering services business, [REDACTED] in Florida.

The Director determined that the Petitioner established her eligibility as a member of the professions holding an advanced degree.³ However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar prong. The Director did not make a determination whether the Petitioner is well positioned to advance the proposed endeavor under the second prong of Dhanasar. For the third prong of Dhanasar, the Director found that, on balance, it would not be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. However, the Director did not provide an analysis for this determination. Upon de novo review, we agree with the Director’s determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.⁴

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 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.” Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner’s statement indicates that she intends to work as a construction manager for her business, which will focus on “being a competitive developer and builder in the Florida real estate

² 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).

³ To demonstrate she is an advanced degree professional, the Petitioner submitted her diploma granting her the title of engineer from Universidade [REDACTED] in Brazil, the corresponding academic transcripts, an academic evaluation, and letters from her previous employers. The record demonstrates that she holds the foreign equivalent of a U.S. bachelor’s degree in civil engineering and at least five years of progressive experience in her specialty. See 8 C.F.R. § 204.5(k)(3).

⁴ While we may not discuss every document submitted, we have reviewed and considered each one.

market within five years.” Her business would manage “all stages of construction or renovation,” including “the analysis of soil characteristics, the study of sunlight and ventilation of the site, and the definition of foundation types.” The Petitioner’s business plan further explains that the business would construct commercial and residential properties starting with two bedroom and two bathroom townhouses in the [] area of Florida. It intends to renovate and maintain rental homes, apartments, and townhomes in the [] area; construct homes in the [] area; and “to obtain infrastructure construction contracts for the sewage/water network and roads.” We agree with the Director that the Petitioner’s proposed endeavor has substantial merit.

However, the Director found that the record did not establish her proposed endeavor has the potential to extend beyond her business and her clients to impact her field of endeavor at a level sufficiently commensurate with national importance. Therefore, the Director found that the Petitioner did not establish the national importance of her proposed endeavor, and she did not meet the first prong of the *Dhanasar* framework.

The Petitioner argues on appeal that “[h]er proposed endeavor has substantial merit and is of national importance” explaining that her extensive professional knowledge and experience in civil engineering and construction management provide her the capability to advance her endeavor. She further argues that “the United States would greatly benefit from the expertise and skills of an experienced Construction Manager such as [the Petitioner]” Upon de novo review, we find the record does not demonstrate that the Petitioner’s proposed endeavor satisfies the national importance element of *Dhanasar*’s first prong, as discussed below.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is “more likely than not” or “probably” true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989). Here, the Director properly analyzed the Petitioner’s documentation and weighed the evidence to evaluate the Petitioner’s eligibility by a preponderance of the evidence.

The Petitioner’s reliance on her professional knowledge and experience to establish the national importance of her proposed endeavor is misplaced. Her professional knowledge and experience relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar*’s first prong. 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. See *id.* at 889.

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 the field more broadly. *Id.* at 893. The record does not demonstrate that the Petitioner’s proposed endeavor will substantially benefit the field of construction management, as contemplated by *Dhanasar*: “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *Id.* The

evidence does not suggest that the Petitioner's construction and civil engineering services business would impact the construction management field more broadly.

With the petition, the Petitioner submitted her statements and a business plan which indicate her proposed endeavor has national importance based on potential economic benefits. The business plan explains the expected growth of job opportunities in the construction industry in Florida due to the increase in residential and commercial development. The business plan states, "Construction companies not only build structures that encourage increased productivity and improve the standard of living but also greatly contribute directly to connecting communities, providing jobs, improving society, creating opportunities for investing and profit-making, and providing income for businesses that provide related goods or services."

Based on the expected growth of the construction industry in Florida, the Petitioner expects for her business to facilitate positive interactions, create job opportunities, and generate significant revenue. The Petitioner asserts that her business "has great potential to deliver substantial positive economic effects to the [United States], attracting investors, including foreign ones, to dump their money into the U.S. real estate markets" The business plan also asserts that although the business' office will not be located in an underutilized business community, it will have a positive impact on those nearby communities. She asserts her business would provide economic benefits to the United States by generating taxes, creating direct and indirect jobs for U.S. workers, and provide economic benefits to Florida and its economically deprived areas. Specifically, the business expects to create four direct jobs and 70 indirect jobs, and generate over eight million dollars in revenue. The business plan also explains the Petitioner's experience; the business' services; the market for construction and civil engineering services; the business' marketing strategy; and the business' proposed staffing, and financial forecasts.

However, the Petitioner has not provided corroborating evidence to support her claims that her business' activities stand to provide substantial economic benefits to Florida or the United States. The Petitioner's claims that her construction and civil engineering services business will benefit the Florida and U.S. economies have not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate her endeavor has the potential to provide economic benefits. The Petitioner must support her assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that her proposed job duties as construction manager of her business would impact the construction and civil engineering industries more broadly, rather than benefiting her business and her proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

The record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner has not provided corroborating evidence demonstrating that her business' future staffing levels and business activities stand to provide substantial economic benefits to Florida and the United States. While the Petitioner expresses her desire to contribute to the United States and its underutilized business areas, she has not established with specific, probative evidence that her endeavor will have broader implications in her field, will have significant potential to employ U.S. workers, or will have other substantial positive economic effects in an economically underutilized business area of Florida or in the United States. Even if we

were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating four direct jobs and 70 indirect job, and generating over eight million dollars of revenue rises to the level of national importance.

The Petitioner further claims that the national importance of her proposed endeavor is evidenced in published articles. The record includes articles relating to the economic benefits of immigrants working in the United States and of immigrant entrepreneurs. We recognize the importance of immigrants to the U.S. economy, and the significant contributions from immigrants who have become successful entrepreneurs. However, being an immigrant working in the United States in the construction management field or starting a construction and civil engineering services business is insufficient to establish the national importance of the proposed endeavor. Instead, of focusing on the importance of immigrants to the U.S. economy or the need for workers in the United States, we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Matter of Dhanasar*, 26 I&N Dec. at 889. 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. The articles submitted do not discuss any projected economic impact specifically attributable to the Petitioner’s proposed endeavor.

To further support the national importance of her proposed endeavor, the record includes an opinion from [redacted] adjunct professor of mathematics at [redacted] College of New York. The opinion, however, mainly focuses on the importance of the construction industry on the U.S. economy and the need for affordable housing. It describes how the construction industry supports national initiatives and that the Petitioner’s experience make her capable to provide construction management and civil engineering services to the construction industry. Instead of focusing on the Petitioner’s specific proposed endeavor having a prospective impact in the field of construction management, the opinion focuses on the importance of the construction industry and how the Petitioner’s experience as a construction manager and civil engineer would be beneficial to the United States.

The opinion further indicates that the Petitioner’s proposed endeavor has national importance based on the business projecting to create four direct jobs and 70 indirect jobs which will benefit the U.S. economy. As explained above, the Petitioner’s projected direct and indirect job creation has not been corroborated with independent, probative evidence. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Matter of Caron Int’l*, 19 I&N Dec. 791, 795 (Comm’r. 1988); see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

The Petitioner does not demonstrate that her proposed endeavor extends beyond her business and her future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as the owner and construction manager of her proposed construction and civil engineering services business offers original innovations that contribute to advancements in her industry or otherwise has broader implications for her field. The economic

benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed business' construction and civil engineering services work and the claimed economic results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, 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 the Petitioner's eligibility and appellate arguments under the second and third 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.