



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

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

In Re: 28536764

Date: OCT. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a construction project manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 Petitioner had not established eligibility for 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, petitioners must 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if:

- 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.

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).

II. ANALYSIS

As it relates 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. At initial filing, the Petitioner's cover letter stated:

[The Petitioner's] vast experience as a Civil Engineer and Project Manager, her completion of dozens of highly important infrastructure projects, and the dire need of Project Managers with her pedigree in the United States makes her proposed work as a Construction Project Manager of substantial merit and national importance. Further, the labor certification requirement should be waived because [the Petitioner] is the owner of [REDACTED], a company through which she seeks to continue her work as a Construction Project Manager within the United States to improve the country's infrastructure, economy, and unemployment rate.

In addition, the Petitioner's personal statement indicated:

In the United States, I plan to provide consultancy, maintenance, repair, rehabilitation, building construction and civil engineering services, applying my managerial skills as a contribution to the construction industry in the country. I also plan to expand gradually in order to generate jobs in the construction industry, in addition to applying the experience I have acquired that will serve as a positive impact on the projects to be developed, optimizing time and resources to achieve a tangible result and contribute to the economy of the United States, specifically in the area of construction.

In response to the Director's request for evidence, the Petitioner provided an updated personal statement reflecting:

. . . I seek to contribute to the United States as a Construction Project Manager through my company, [REDACTED]. Through my company, I will serve as the Owner and Construction Project Manager to oversee the construction and execution of different types of infrastructures throughout the nation. My company is dedicated to providing advice, maintenance, repair, rehabilitation, and supervision for the construction of buildings and other civil works within the country. I will assist both private and public entities in carrying out this [sic] construction needs in an efficient and safe manner. My education and vast experience have put in prime positioning to carry out my endeavor. I have worked with all different types of infrastructures for the last two decades and have lead [sic] hundreds of workers into successfully carrying out high-stake projects. In each of the projects I developed throughout my career, I planned, budgeted, and coordinated, from start to finish, the entire development. This allowed me to understand project management technically and managerially in different areas of civil engineering, which has increased my leadership capabilities and professional technical capabilities.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner maintains the national importance of her proposed endeavor of providing construction project services through the operation of her business.

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 references her submission of “Probative Research,” including a wide of topics covering construction project manager occupations, infrastructure investment, architecture, industry needs, and small businesses, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her particular construction project services through [REDACTED] rather than the importance of construction project managers and related fields and industries.² 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.

Moreover, the Petitioner contends that she presented an expert opinion letter from Dr. J-A-L- who found the proposed endeavor has national importance. The letter, however, makes the same arguments, discussed above, relating to the importance of the construction industry, the country’s infrastructure, and national initiatives rather than focusing on the national importance of the Petitioner’s specific, proposed endeavor of operating [REDACTED]. Furthermore, the letter does not explain how the Petitioner’s services and business have broader implications for our country. To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of his work. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how her proposed endeavor largely influences the field and rises to the level of national importance. In *Dhanasar*, we determined 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. Likewise, the record does not show through supporting documentation how her services or business stand to sufficiently extend beyond prospective clients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner also claims she provided “letters of recommendation confirming her contributions and impacts in the field.” However, the Petitioner’s skills, expertise, abilities, and prior accomplishments 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 she proposes to undertake has national importance under *Dhanasar*’s first prong. In addition, the letters discuss the impact of the Petitioner’s work to their own experiences rather than the required broad impact to the construction industry. *Id.* at 889.

Further, although the Petitioner provided a business plan for [REDACTED], the Petitioner did not demonstrate how her business plan’s claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the sales forecast \$455K in year 1 to \$881K in year 5, the

² The Petitioner’s arguments and evidence relate more to the substantial merit aspect of the proposed endeavor rather than the national importance part.

business plan does not establish the benefits to the regional or national economy would reach the level of “substantial positive economic effects” contemplated by *Dhanasar. Id.* at 890. Similarly, although the plan claims the business would create 1 position in year 1, which is allocated to the Petitioner, to 4 positions in year 5, which includes the Petitioner’s position, the Petitioner did not demonstrate that such future staffing levels would provide substantial economic benefits to Texas or the region or U.S. economy more broadly at a level commensurate with national importance.³ The Petitioner, for instance, did not show that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not establish that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner’s proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

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. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.⁴

III. CONCLUSION

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

³ Although the business plan claims the company will utilize independent contractors for projects, it appears the business plan does not factor them into its projections.

⁴ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where applicants do not otherwise meet their burden of proof).