



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

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

In Re: 28545583

Date: OCT. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a conflict resolution specialist, 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] endeavors to provide premium-quality mediation and conciliation services as well as court representation services to Brazilian immigrants and U.S. businesses that are operating in Brazil.

[The Petitioner] will leverage her extensive knowledge and in-depth understanding of comparative legal frameworks and bring high levels of satisfaction and operational efficiency to clients. In addition to delivering high-quality services and tangible results for clients, she will provide educational opportunities for her employees. Moreover, over the next five years, [the Petitioner's] U.S. established company registered in the State of Florida ("Company") will achieve growth that will result in both direct and indirect job creation and increased taxes paid to the U.S. government

In addition, the Petitioner's personal statement indicated:

When my permanent resident visa is approved, I intend to work in the areas that I work today in Brazil, such as conciliation and mediation between people and companies and, also, as a team manager in face-to-face and distance modality with a focus on high performance.

I would like to open a mediation, conciliation and private arbitration company that would work to resolve the cases without having to be brought to the judiciary. With regard to team management, I would like to provide advice and provide training to companies/agencies to assist them in this issue that I believe is of fundamental importance for the proper functioning of any company/institution. Also, focusing on the management of teams at a distance.

In response to the Director's notice of intent to deny, the Petitioner claimed:

[The Petitioner] will offer legal services at reasonable costs to low-income people and small and medium-sized businesses that would not otherwise have access to the justice system because they lack the financial means. A lawyer such as [the Petitioner], who is knowledgeable in both U.S. and Brazilian business rules and regulations and how they relate to the client's operations, is essential given the rise in U.S. corporations doing business in Brazil. To preserve its assets, achieve its business objectives, and ensure a better future for its businesses, the Company will assist its corporate clients with many diverse concerns connected to business law. Additionally, the Petitioner will help clients resolve conflicts and legal disputes outside of Court, saving them significant time, energy, and money. She is a highly skilled mediator and conciliation professional, demonstrating that her proposed endeavor has substantial merit.

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 mediation and conciliation 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. Here, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her particular mediation and conciliation services through her business rather than the overall importance of mediation, conciliation, conflict resolution, professional mediators, law firms, market research analysts, training and development specialists, sales managers, alternative dispute resolution for the poor, parent-child mediation, U.S. relations with Brazil, and other related fields, industries, and topics.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.

The Petitioner also references her submission of a recommendation letter from a judge "highlight[ing] her valuable professional skills set," "numerous awards and compliments," and "attend[ance] [at] several courses." 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.

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. Here, the Petitioner did not demonstrate how her proposed endeavor of owning and operating a mediation and conciliation business 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. While the Petitioner indicates her submission of business intent letters from companies, the Petitioner did not show how her services or business stand to sufficiently extend beyond these prospective clients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Finally, although the Petitioner provided a business plan for her company, 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 total sales forecast \$485K in year 1 to \$2.02M in year 5 over locations in four states, the business plan does not establish the benefits to the regional or national

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

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 7 positions in year 1, one of which is allocated to the Petitioner, to 26 positions in year 5 over four states, the Petitioner did not demonstrate that such future staffing levels would provide substantial economic benefits to Florida, Massachusetts, Texas, or California or the region or U.S. economy more broadly at a level commensurate with national importance. 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. As such, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her qualification under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.³

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 The Director’s decision does not make a finding on the Petitioner’s claimed eligibility for the underlying immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. Furthermore, although the Director indicated the Petitioner did not qualify for *Dhanasar*’s third prong framework, the decision does not contain an analysis or explanation for her conclusion. Because the Petitioner did not meet the first prong requirements, we need not remand the matter to the Director in order to make a determination on the underlying immigrant classification and third prong analysis. 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).