



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

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

In Re: 28580499

Date: OCT. 23, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a legal analyst, 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 10 years of experience in civil and tax law in Brazil. She states that she intends to “continue her career as a legal analyst specialized in Brazilian tax law,” working “with law firms, businesses, or corporations to provide expert advice.” She states that her proposed endeavor will impact the United States in the following ways:

- Consulting on activities in the legal landscape and business environments of Brazil;
- Participating in due diligence to research, identify, and evaluate legal contingencies;
- Aid in any possible commercial benefits for businesses, corporations, and individuals when doing business in developing markets;
- Proposing solutions to minimize the burden and reduce the risk of any and all pertinent legal issues;
- Advising companies looking to do international business on international laws, especially those that apply in Brazil; and,
- Creating a smooth transition for U.S. individuals or entities, especially those looking to do business in Brazil, Latin America and abroad.

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, as well as recommendation and support letters, and an expert opinion letter. She also submitted industry reports and articles discussing the legal services market in the United States and foreign relations between the United States and Brazil.

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 a business plan, additional industry reports and articles, additional recommendation letters, and an employment offer letter.

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 2007, followed by more than five years of progressive experience. See 8 C.F.R. § 204.5(k)(3)(i)(B).

In her business plan, the Petitioner states that she will initiate her proposed endeavor by forming her own consulting company, [REDACTED] “which will specialize in providing legal services and legal advice mostly on Tax Law to American companies looking to establish subsidiaries and expand their market reach and exports to Brazil or other South American markets.” The Petitioner’s business plan anticipates that the company will employ 11 employees in its first five years and predicts total revenue of over \$1.4 million by its fifth year providing legal consulting services in [REDACTED] Florida.

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 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 her field of endeavor, going beyond her own business and clients. The Acting Director further noted that the support letters in the record, while praising the Petitioner’s personal and professional achievements, do not discuss the Petitioner’s proposed endeavor or demonstrate how it would have national importance of the United States. Additionally, the Acting 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.” She further asserts that the Acting Director did not give due regard to all evidence in the record, including her resume, business plan, letters of recommendation, and industry reports and articles. 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 as business, entrepreneurialism, science, technology, culture, health, or education. 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.

The Petitioner submits articles and industry reports describing growth trends and labor shortages in the legal services market.³ However, the Petitioner does not explain how these growth trends in law firms demonstrate that her proposed endeavor is of national importance. An article titled “In demand and emerging legal practice areas for 2023” identifies high demand areas of specialty within the legal profession but does not mention tax law or knowledge of businesses in Brazil. Another article, titled “Attorney shortage creates challenge to affordable representation,” discusses trends in civil cases in South Dakota but does not mention Florida, the area of the Petitioner’s proposed endeavor, or her specific field of endeavor, tax law. 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 shortages and trends in the field 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 November 2022 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 legal analysis 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.⁴ 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 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] a licensed attorney and adjunct professor at [REDACTED] University, 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] describes the Brazilian economy and business landscape, as well as its legal system. He concludes the analysis stating, “U.S. companies doing business or planning to do business in Brazil would benefit from the expertise and skills of [the

³ While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

⁴ The record does not include evidence that the Petitioner’s business is active or registered in Florida, the location stated in the business plan.

Petitioner], with an extensive knowledge of the legal landscape in Brazil.” However, he does not specifically describe or discuss the Petitioner’s proposed endeavor or elaborate on how it will have a prospective impact on the United States, including the national or global implications on international business, the potential to employ U.S. workers, or the positive economic effects.

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. While we acknowledge the Petitioner’s appellate claims that the Acting Director did not duly consider certain pieces of evidence, we note that the decision discusses each of the claimed pieces of evidence the Petitioner’s lists in her brief. Nevertheless, we address them again herein. The Petitioner continues to rely upon the asserted merits of the services she will provide, her personal and professional qualities and achievements, and the trends in the legal services field. 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.⁵ See *INS v. Bagamasbad*, 429 U.S. at 25.

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.

⁵ 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 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.