



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

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

In Re: 28424145

Date: OCT. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner states that she is a “key executive with multicultural marketing management and product development expertise.” She 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 Director of the Texas Service Center denied the petition, concluding that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate her eligibility for the requested national interest waiver. 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.*

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

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.

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

In an initial “Personal Plan and Statement,” the Petitioner discussed her education and career trajectory in the beauty industry, highlighting her latest position with the [REDACTED] where she worked in product development and marketing of various hair products. Based on her academic credentials and subsequent work experience, the Director determined that the Petitioner established her eligibility as a member of the professions holding an advanced degree.³ The Petitioner stated that product development and marketing is her proposed endeavor.

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 endeavor is of national importance, as required by the first *Dhanasar* prong. The Director further found that the Petitioner did not establish that she is well positioned to advance the proposed endeavor, and 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. 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, as the Petitioner has not established that her specific proposed endeavor has national importance.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 states that in her former role she was required to “work closely with the labs” to assist in the creation and development of products, which she then helped launch by developing marketing strategies. The Petitioner expresses her intent to bring “over thirteen years of experience in high-level

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 academic diploma and transcripts from Universidade [REDACTED] and letters from the [REDACTED] where she has worked since 2013. The record demonstrates that the Petitioner holds the foreign equivalent of a U.S. bachelor’s degree 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.

marketing and product development” in the cosmetics and beauty care industry to her proposed endeavor, which she describes as follows:

My focus will be to continue advancing my career by improving existing products, creating and developing news ones, providing marketing research and idea generation, implementing marketing strategies in the development of new and recreation of already marketed products, as well as collaborating with the technical and manufacturing specialists. I will lead creative processes applying innovation and focusing on ensuring products are meeting customers’ needs and expectations. My joint product development approach will give the companies I will serve a competitive advantage, ultimately increasing U.S. companies’ sales, revenues and profit, and generating substantial economic growth as well as creating more jobs in the United States.

The Petitioner also states that she will use her knowledge and experience with the Latin American beauty care market to provide marketing and product development services to U.S. companies who seek to expand their presence into Latin American. The Petitioner seeks to use her experience abroad to “overcome cultural barriers,” address consumer needs, and boost the sales of the brands and products of the U.S. companies that will use her services.

The Director determined, and we agree, that the Petitioner’s endeavor has substantial merit. Notwithstanding the favorable determination regarding this element of the first prong of the *Dhanasar* framework, the Director determined that the Petitioner did not demonstrate that her endeavor has national importance. The Director found that the endeavor will benefit the Petitioner’s prospective employers rather than the nation, noting that the record lacks “strong and empirical indicators” to support the claim that the endeavor will impact “other industries and sectors of the nation’s economy.” The Director also found that the Petitioner has not established that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation, adding that “ancillary benefits” to the United States are not sufficient to establish that the endeavor rises to the level of national importance. Ultimately, the Director acknowledged that the Petitioner’s services are of value to her future employers but concluded that the Petitioner has not established that her work will have national or global implications within her industry.

On appeal, the Petitioner highlights her respective roles as multicultural marketing manager and head of product development and asserts that previously submitted industry reports demonstrate the relevance of her skills and expertise in these dual roles. However, the issue of whether the Petitioner’s skills are relevant within her field goes more to the question of whether she is well positioned. As previously stated, in determining the national importance of an endeavor, we focus on the “the specific endeavor that the foreign national proposes to undertake.” *Matter of Dhanasar*, 26 I&N Dec. at 889. In this matter, although the Petitioner stated that product development and marketing is her initial proposed endeavor was generally vague and conceptual. She did not specifically identify the product she sought to develop and promote as the subject of that endeavor at the time of filing. Without specifying a product in developing or marketing, assessing the economic impact of her endeavor proved too abstract to determine its potential impact, if any.

On appeal, the Petitioner mentions evidence in the record pertaining to the “[redacted]” asserting that she has developed and launched products while working on those projects. The evidence

regarding such projects shows that the Petitioner was hired by a company called [redacted] as Director of Product Development. In her role, she was responsible for “comprehensive analysis of the brand and current portfolio, [and] aligning the brand’s cultures and features, which determines the marketing strategies, product’s formulas, and further launches.” The record shows, however, that the Petitioner did not assume her position with [redacted] until August 2021, thus indicating that she was not developing or launching the referenced product she highlights in September 2020, when this petition was filed. And even if the Petitioner had already been employed by a particular company and working on a specific product at the time of filing, the record does not demonstrate that the potential prospective impact of her work for a particular employer or with a specific product or brand would be on a broad enough scale as to result in “national or even global implications” for the beauty and cosmetics industry. *Id.*

The Petitioner also argues in her appeal brief that her professional skills have “economic relevance.” However, a discussion of the Petitioner’s skillset is more relevant to a consideration under *Dhanasar*’s second prong, which seeks to determine whether the Petitioner is well positioned and “shifts the focus from the proposed endeavor to the foreign national,” the focus of a first prong discussion is the endeavor itself. *See Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner has not shown that using her acquired business skills to develop and launch a product will result in an impact that rises to the level of national importance.

While the Petitioner contends that she has submitted evidence containing a “deep analysis of [the] proposed endeavor,” the documents she highlights, including a business plan, expert opinion letter, and letters of recommendation, do not establish that the proposed endeavor has national importance.

As a preliminary matter, we note that the Petitioner’s reference to a business plan cannot be corroborated, as the record does not contain a document labeled as such. The record does, however, contain a document titled “Economic Impact Analysis,” which is similar to a business plan in that it includes projections for future income and employee hires that are attributed to the Petitioner’s proposed endeavor. The impact analysis states that its purpose is to provide “a rules-based and transparent measure of the economic importance of a specific project, program, activity, or policy to an economy.” The document also states that the Petitioner’s endeavor will “contribut[e] to the advancement of the cosmetic, beauty care, and wellness industries” and includes estimates for new jobs created and five-year sales projections for “small and medium-sized companies” as well as for “large companies” resulting from the Petitioner’s product development and marketing endeavor. However, it is unclear how the impact analysis arrived at the figures it includes as they are not based on a specifically identified product available at the time of filing, on which the Petitioner later relies. Therefore, we question the reliability of this impact analysis.

Although the Petitioner claims on appeal that the data in the Economic Impact Analysis document “presents strong, solid, and empirical indicators,” she explains that such data “was elaborated based on the products she has already developed and launched in America in 2022,” thus indicating the financial figures were based on the Petitioner’s employment with [redacted] a position she obtained nearly one year after filing this petition. We note that the affected party has the burden of proof to establish eligibility for the requested benefit *at the time of filing* the benefit request and continuing until the

final adjudication. 8 C.F.R. § 103.2(b)(1).⁵ Conducting such an analysis based on projects that the Petitioner did not start working on until after this petition was filed would not establish eligibility at the time of filing. *See id.* As such, the Petitioner cannot properly rely on the financial figures in the impact analysis to support her claim that her endeavor “will benefit her future employers and the American nation” through direct and indirect job creation. Furthermore, while any basic economic activity has the potential to positively impact the economy, the record does not demonstrate how the Petitioner’s endeavor to develop and launch an undetermined product can generate such significant economic activity that rises to the level of “substantial positive economic effects.” *Matter of Dhanasar*, 26 I&N Dec. at 890.

As previously noted, the Petitioner mentioned recommendation letters as evidence of her endeavor’s national importance. The Petitioner’s reliance on the referenced letters is misplaced on this point, given that they make no mention of her actual endeavor; rather, they mainly focus on the Petitioner’s prior work and discuss how her skillset can benefit her employers, which reflects more on the second prong and whether she is well positioned to advance her endeavor. And while the expert opinion letter from [REDACTED] Adjunct Associate Professor of Business at the [REDACTED] University, echoes the Petitioner’s claim that her endeavor has national importance, that claim is not supported by empirical evidence or any other persuasive details regarding the specific impact of the Petitioner’s proposed endeavor. The essence of [REDACTED] letter highlights the Petitioner’s skills and experience, pointing to her “significant experience in the area of innovation product development” and her ability to “generate creative content, monitor research processes, and optimize companies’ resources.” However, as we pointed out earlier, while the Petitioner may possess skills that bring value to her employers, [REDACTED] did not establish that these assets lead to national or industry-wide impact that is commensurate with national importance. In addition, [REDACTED] opinion is based on the general idea that the Petitioner will develop and launch a beauty product. Because [REDACTED] does not appear to have known the type or nature of the specific beauty product the Petitioner planned to develop and launch at the time of filing, his assertions regarding the proposed endeavor’s potential prospective impact are not persuasive.

The Petitioner and [REDACTED] also discussed the Petitioner’s intent to disseminate her business knowledge to broader audiences through conferences, lectures, and seminars. However, the record lacks evidence showing that the impact of this aspect of the endeavor would have such broad implications nationally or within the beauty industry as to rise to the level of having national importance. In the same way that *Dhanasar* finds that a classroom teacher’s proposed endeavor is not nationally important because it will not impact the field more broadly, we find that the Petitioner has not established her proposed endeavor in this case will sufficiently extend beyond her prospective employers to affect her industry or the nation more broadly. *Id.* at 893. Further, while the Petitioner claims that one of her “main objectives in the United States is to spread” her business knowledge, this objective is at odds with the above-mentioned economic impact analysis, which states that the Petitioner’s “main goal” in the United States is “to develop innovative products and well-structured marketing launch plans and brand positioning strategies, contributing to the advancement of the cosmetic, beauty care, and wellness industries.” The analysis neither mentions the Petitioner’s desire

⁵ *See also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971) (providing that “Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.”).

to spread her business knowledge nor quantifies a financial impact from this aspect of her endeavor. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (establishing petitioner's responsibility to provide evidence resolving inconsistencies in the record).

Further, the Petitioner disputes the Director's finding that the previously submitted articles and industry reports were not specifically related to the proposed endeavor. The Petitioner goes on to individually discuss the contents of several articles about the beauty and cosmetics industry as well as the contents of an executive order and several government initiatives; she argues that her skills will enable her to improve product packaging and develop formulas that will meet consumer needs and enable American companies in the beauty industry to stay competitive both "internally" and globally by exporting their products. However, as noted earlier, at the time of filing the Petitioner's endeavor was not specific enough to identify a quantifiable product she planned to develop and promote. As such, she did not establish that her endeavor, at the time of filing, had the potential to impact the beauty industry through improved products and enhanced competitiveness among companies within that industry. And although the government initiatives and articles pertain to business and the beauty industry, they do not specifically pertain to the Petitioner or her proposed endeavor. As such, they also do not show that the Petitioner's endeavor has national importance.

In sum, although the Petitioner claims that the impact of her endeavor to work as a director or product development and marketing manager in the beauty industry would extend beyond her prospective employers, she has not adequately supported these claims with reliable information about her endeavor's prospective impact on the beauty industry or the nation. Despite the substantial merit of the Petitioner's proposed endeavor, the record does not establish by a preponderance of the evidence that the endeavor meets the first prong of the *Dhanasar* framework related to national importance.

The documentation in the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Accordingly, because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any evidence or arguments concerning the Petitioner's eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

As the Petitioner has not met the national importance requisite within the first prong of the *Dhanasar* analytical framework, we conclude that she has not established that she is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.