



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

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

In Re: 28430788

Date: SEP. 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a foreign legal consultant, seeks classification as either a member of the professions holding an advanced degree or 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. 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 Petitioner qualifies for the EB-2 classification as an advanced degree professional but that the record did not establish that a waiver of the job offer requirement is 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, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 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 a matter of discretion,<sup>1</sup> 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 found that the Petitioner qualifies for the EB-2 classification as an advanced degree professional.<sup>2</sup> The record shows that the Petitioner possesses a bachelor of law degree from Brazil, obtained in 2012, followed by at least five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2). The Director also found that the Petitioner established the substantial merit of the proposed endeavor. The issues on appeal are whether the Petitioner has established the proposed endeavor's national importance, whether she is well-positioned to advance it, and whether, on balance, a waiver of the job offer requirement would benefit the United States.

The Petitioner's proposed endeavor is to work as a lawyer and legal consultant. The Petitioner states that she will "continue to use [her] abilities to provide my knowledge and skills in the area of law to U.S. companies, including those who wish to expand their business to international markets in Latin America." She also states that she will use her "expertise in business and labor law . . . to help small and medium-sized enterprises in the U.S. improve operations and achieve better productivity and profitability." In response to the Director's request for evidence (RFE), the Petitioner further stated she would offer legal services specializing in the areas of civil law, international law, digital law, legal management, and cross-border transactions.

In concluding that the Petitioner did not establish the national importance of the proposed endeavor, the Director noted that while the Petitioner's stated goals—to contribute to the accumulation of capital, to support existing jobs while creating new ones, to implement innovative techniques in management, to promote equality, and to broadly impact and be an agent of transformation in the legal field—are laudable, there was insufficient evidence in the record to demonstrate that these goals would be achieved at a level commensurate with national importance. The Director concluded that the Petitioner's role as a lawyer is likely to be most immediately helpful and transformative to her employer and its clients. The Director also acknowledged that the Petitioner stated that she has co-authored a legal text, but that the record did not contain evidence that this publication was widely read, sold, or otherwise impacted the legal field in Brazil or elsewhere.

On appeal, the Petitioner contests the accuracy of the Director's conclusions and claims that her endeavor does in fact have national importance. The Petitioner asserts that she has submitted substantial evidence of significant past achievements, and that these achievements are a way to assess the potential prospective impact of her proposed endeavor. Specifically, the Petitioner asserts that her

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<sup>1</sup> *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).

<sup>2</sup> The Petitioner also claimed eligibility for the EB-2 classification as an individual of exceptional ability. Because the Director concluded that the record established the Petitioner's qualification as an advanced degree professional, the Director did not make a finding as to whether the Petitioner established that she is an individual of exceptional ability.

work has been valued by her employers, that her work is “fully disseminated into the Law industry, to the extent of having impacted . . . limitless other fields,” and that “[e]ven a superficial reading of [the Petitioner’s] professional history reveals that, upon evaluating her past achievements, her proposed endeavor also has a significant prospective impact.”

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

However, we conclude that the Petitioner’s assertions do not overcome the Director’s findings or establish the national importance of the proposed endeavor. First, the Petitioner refers on appeal only generally to “the previously submitted documents” as establishing “past achievements,” rather than to any specific evidence in the record or any specific achievements in the field. In reviewing the record, we note that it does contain evidence—including the Petitioner’s educational documents, letters of recommendation, and evidence of her membership in legal associations and participation in legal conferences—to help show that the Petitioner is an experienced attorney in Brazil who appears to be well-respected by her colleagues. The record also contains evidence relating to the Petitioner’s employment as a lawyer at a railroad company in Brazil, and that through this employment she participated in a congressional hearing that received media attention. However, the record does not contain evidence that the Petitioner’s past achievements resulted in a broad impact on the legal field, and the Petitioner’s general, conclusory statements to the contrary are insufficient to meet her burden of proof.

We also note that while a petitioner’s past work and achievements may be helpful in illustrating how they plan to carry out their proposed endeavor or its potential prospective impact, the focus of the first prong is on the proposed endeavor itself and not the petitioner. *See id.* Evidence of the Petitioner’s skills, expertise, and record of success generally relates to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the [noncitizen] and whether they are well-positioned to advance it. *Id.* The Petitioner must establish that her specific endeavor—to work as a lawyer and legal consultant—has national importance under *Dhanasar*’s first prong. Even considering her past work, the Petitioner has not shown that her achievements in the field are of such a caliber that they demonstrate that her endeavor has the potential to impact the legal field or the economy at a level commensurate with national importance.

The Petitioner’s professional plan and counsel’s brief in response to the RFE, the language of which was quoted again on appeal, list many goals for the Petitioner’s endeavor, including that she will use the legal system to seek justice for her clients, ensure efficiency in the legal system, provide advice to corporations on a variety of legal issues, promote the growth of U.S. jobs, and facilitate cross-border transactions. But rather than establishing that the Petitioner’s specific proposed endeavor has national

importance, several of these objectives simply describe the typical occupational duties of an attorney.<sup>3</sup> Additionally, other than listing these objectives, the Petitioner's professional plan does not provide further specific details as to how these objectives would be accomplished. Without more details, the plan does not establish how these objectives may result in a broad impact on the legal field or U.S. business interests that would be commensurate with national importance. In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead we focus on the "specific endeavor that the [noncitizen] proposes to undertake." See *Matter of Dhanasar*, 26 I&N Dec. at 889. Upon de novo review, we agree with the Director's conclusion that the Petitioner has not established that her proposed endeavor to work as a lawyer and legal consultant has the significant potential to extend beyond her clients and employer to impact the legal field or the U.S. economy at a level that rises to national importance.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prongs. 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 alternative issues on appeal where the applicant is otherwise ineligible).

### III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> In determining national importance, the analysis focuses on what the petitioner will be doing rather than the specific occupational classification. For instance, although the petitioner in *Matter of Dhanasar* was an engineer by occupation, the decision discusses his specific proposed endeavor "to engage in research and development relating to air and space propulsion systems, as well as to teach aerospace engineering." See generally, 6 *USCIS Policy Manual* F.5(D)(1), <http://www.uscis.gov/policy-manual>; see also *Matter of Dhanasar*, 26 I&N Dec. at 891.