



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

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

In Re: 22664587

Date: SEP. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, seeks classification as a member of the professions holding an advanced degree. *See* 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she had not established that 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, 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 demonstrate they merit 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 USCIS may, as matter of discretion,<sup>1</sup> grant a national interest waiver if the petitioner shows:

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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).

- 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

In a professional plan and statement submitted with the petition, the Petitioner stated that she intends “to continue to use her expertise and knowledge in the fields of civil engineering, construction, business management, project management and execution, budget control and construction planning by working as a Civil Engineer in the U.S.”

She further stated:

My career plan in the United States is to continue my career working with an American engineering firm where I will develop strategic partnerships involving new businesses in the U.S. in order to help grow a company’s engineering portfolio. I will provide indispensable guidance regarding large scale projects involving construction and engineering. I would love to work extensively, as I did in Brazil, in the managerial and procurement aspects of the constructive process. This will serve to increase the security and the construction work and benefit a client financially. I intend to continue managing, maintaining good working relationships, and identifying any opportunities for new business in the field of civil engineering. My leadership and management skills will be an asset, as I will be able to maximize efficiency and productivity for companies. My goal is to continue my work managing all aspects of any project, utilizing my management skills, financial proficiency, engineering experience, and overall vision of success to lead companies in developing new construction and engineering projects, ultimately benefiting the U.S economy.

...

My career to date has been significant and I am aware of the concrete contributions I can provide in the U.S. I fully intend to continue my career, working as a Civil Engineer. I am confident I will contribute and generate revenue and jobs within the United States, should my application be approved.

In addition to her professional plan and statement, the Petitioner submitted copies of her academic credentials, an expert opinion letter, letters of recommendation, and industry articles and reports.

The Director determined that the Petitioner's initial filing did not establish that the proposed endeavor had national importance. The Director observed that the Petitioner did not provide specific insight as to what she intends to do in the United States, or that her proposed endeavor would have potential prospect impact, significant potential to employ U.S. workers, or other substantial positive economic effects. As a result, the Director requested a detailed description of the Petitioner's proposed endeavor in order to evaluate her request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner submitted a new professional plan and statement which provided further information about her proposed endeavor. The Petitioner stated:

My plan is to continue contributing for the U.S. growth that also rely in the real estate and infrastructure sector. More than that, I want to focus on projects that also have and associated human aspect. Having the opportunity to lead the reconstruction of a Residential Community destroyed by Hurricane Irma is a way to show the Nation that I am here to share my knowledge and experience, not only to support the economic growth but also to contribute for the well-being of families in [] need.

...

I am currently employed at [] the company is responsible for collecting blood plasma which is the raw material for [] products. In addition to that, [] contributes to the Economy Growth by paying for the Plasma Donation. Families in need or low income families have the opportunity to help in the process to manufacture/producing medical treatment and also increase their income by donating plasma.

As the Sr. Engineer/Project Manager I respond for the Renovation and Expansion of the Plasma Donation Center through the U.S. My role is to guarantee their operation by matching FDA regulation for their families and provide a safe environment for our donors. Moreover, I am responsible for expanding our Center to match the increase in demand for more plasma aligned to the Company goals of [delivering] more treatment and medicine for the Americans, especially after/during the COVID-19 crisis.

Through my work, I can contribute to socioeconomic needs in the United States, because improved infrastructure development, which can facilitate commercial activities as well as societal activities throughout the United States. My techniques can be applied to a wide range of industry areas, and through my skills in creating innovating technological methods; I can enhance operational efficiency and quality, allowing me to impart my contributions on a wider, and even global, scale.

The Petitioner further claimed that as the National Senior Engineer Project Manager for [] she manages and will continue to manage the company's donation centers in Florida, Indiana, Louisiana, Oklahoma, and Texas.

She also submitted additional articles and reports as well as previously submitted evidence in support of her eligibility for a waiver of the job offer.

In denying the petition, the Director determined that although the proposed endeavor had substantial merit, the Petitioner provided insufficient evidence to establish the proposed endeavor's national importance. The Director determined that the Petitioner had not shown that her proposed endeavor had significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner asserts that USCIS "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law to the detriment of the Petitioner." The Petitioner also asserts, through counsel, that the Director disregarded the evidence submitted, and provides a brief emphasizing her qualifications as a civil engineer and asserting that the evidence of record establishes the national importance of the proposed endeavor.

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claims is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Preliminarily, we note that the Petitioner's proposed endeavor is material to whether the endeavor has substantial merit and is of national importance. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see also Dhanasar*, 26 I&N Dec. at 889-90. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

While not raised by the Director, the Petitioner introduced a new proposed endeavor in response to the RFE rather than establishing the national importance of the proposed endeavor described in the initial petition. The Petitioner's proposed endeavor to work as a national senior engineer project manager for [REDACTED] where she claims she will continue to guarantee the operation of the company's donation centers by ensuring they are FDA compliant, was presented after the filing date and cannot retroactively establish eligibility. If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. *See* 8 C.F.R. § 103.2(b)(1). Therefore, on appeal, we will consider if the record demonstrates that proposed endeavor submitted with the initial filing, working as a civil engineer, has national importance. We conclude it does not.

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." *See Dhanasar*, 26 I&N Dec. at 889. 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.

We agree with the Director that the Petitioner has not provided sufficient documentation describing the proposed endeavor or explaining how it is of national importance. The purpose of the national interest waiver is not to afford the Petitioner an opportunity to engage in a job search or further her own career while only adding ancillary benefits to the nation. In her personal statement submitted in support of the petition, the Petitioner indicated her intent to work with a U.S. engineering firm to “develop strategic partnerships involving new businesses in the U.S. in order to help grow a company’s engineering portfolio.” The Director noted that the endeavor as initially described did not sufficiently articulate what the Petitioner intended to do in the United States, and requested additional information. In response, rather than provide additional details regarding her initial endeavor, the Petitioner stated that subsequent to the petition’s filing, she obtained employment with [REDACTED] and described her job duties for that company, which do not appear to align with the duties generally performed by a civil engineer. Overall, we have insufficient information concerning the proposed endeavor with which to determine whether it has national importance. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *See id.* at 889. While it may include one or more of the positions outlined above, we conclude that the Petitioner has not provided a specific or consistent proposed endeavor activity such that we can determine its national importance.

Throughout the record and in her personal statements, the Petitioner points to her background, education, and experience in her field.<sup>2</sup> The Petitioner also provided several letters of support that discuss her civil engineering capabilities and experience. The Petitioner’s knowledge, skills, and experience in her field, however, relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *See id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under the second consideration of *Dhanasar*’s first prong. 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.

The Petitioner claims that her proposed endeavor has national importance because civil engineering has a significant impact on the U.S. manufacturing sector, and specifically claims that her activities will have a ripple effects on the U.S. economy. Further, the Petitioner offered information, including articles and reports, about the importance of civil engineering and manufacturing and its crucial role in the U.S. economy, the importance of STEM occupations, and the impact of foreign-born STEM professionals.<sup>3</sup> While the submitted information and articles provide useful background information,

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<sup>2</sup> While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

<sup>3</sup> It is important to note that being employed in a STEM field does not automatically show eligibility for a national interest waiver. Specifically, the STEM endeavor must have both substantial merit and national importance in respect to the first prong of *Dhanasar*. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policymanual>. Here, the Petitioner has shown the former, but not the latter.

they are of limited value in this matter, as the Petitioner's specific proposed endeavor remains unclear.<sup>4</sup> Furthermore, 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 "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner has not established how her individual employment in one or more of the roles identified would affect the U.S. economy more broadly consistent with national importance.

The record contains an expert opinion letter from an adjunct professor at the Metropolitan College of [REDACTED] who concludes that the Petitioner's proposed work has national importance. But the professor does not base his conclusion on the national importance of the Petitioner's specific endeavor. Although he recites the Petitioner's career history and accomplishments, and praises her success as a civil engineer in Brazil, his findings stem from the significance of civil engineering and construction, particularly in relation to U.S. construction companies seeking to engage in business with Brazil. The letter therefore does not establish the national importance of the Petitioner's specific proposed U.S. work. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable"). The letter does not contain sufficient information and explanation of the Petitioner's proposed endeavor, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work in civil engineering offers broader implications in her field or substantial positive economic effects for our nation that rise to the level of national importance.

While the Petitioner's statements reflect her intention to provide valuable civil engineering services for her clients or employers, she has not offered sufficient information and evidence to identify the proposed endeavor with specificity or otherwise demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact her field more broadly. *See Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her employer or clientele to impact the civil engineering field or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's civil engineering services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

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<sup>4</sup> We further note that the Petitioner's counsel refers to these reports and articles throughout the record, asserting that the field of civil engineering and its relationship to the status of the U.S. manufacturing sector impacts the U.S. people and its economy. On appeal, counsel emphasizes the Petitioner's experience in the field and generally asserts that her proposed endeavor will help the national economy by providing crucial civil engineering services to U.S. companies. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2 (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. 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).

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of 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. 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.