



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

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

In Re: 28546345

Date: SEP. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, 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,¹ grant a national interest waiver if the petitioner shows:

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).

- 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 using [her] expertise and knowledge in the areas of entrepreneurship, business administration, business management, logistical control, import/export, business consulting, business development, strategic planning, negotiations, and leadership, as well as international tax and civil law, by working as an Entrepreneur in the United States.”

She further stated:

My career plan in the United States is to continue working as an Entrepreneur, developing new enterprises for the North American market and generating more direct and indirect jobs through my endeavors. I intend to continue expanding, maintaining good working relationships with investors, and identifying any opportunities for growth. I have plans for future business expansion and I will continue to facilitate the creation of jobs within the US. I have the experience and skills to navigate lucrative business projects and my unique expertise will surely provide guidance and success in the renewable energy sector. With my knowledge and experience in international tax and civil law, my business in the US will be especially beneficial to other companies doing business in Brazil, in order to help them navigate the legal intricacies of the country.

I intend to open my own business in the wood pellet and sawn wood business in the United States, as well as to continue working in the commercial and import export sectors of the products. I also see great business potential in the field of consulting and representation of Brazilian companies exporting to the USA. To this end, I consider myself prepared to provide administrative and consultancy services to companies in the pellet and wooden frames business.

...

This [endeavor] is of national importance to the US because there is a severe shortage of professionals in my field. By employing my knowledge of entrepreneurship, business administration, business management, logistical control, import/export, business consulting, business development, strategic planning, negotiations, and leadership, as well as international tax and civil law, I will most assuredly continue to advance as an entrepreneur in the U.S.

My specific endeavor will potentially impact the U.S. in the following ways:

- Overall U.S. job creation and tax revenue;
- Designing, implementing, and managing all activities in the business development and management, legal, strategic planning, and leadership areas of a business;
- Serving economically underserved and rural communities, with my expertise in the renewable energy sector, to streamline their business and energy areas, as well as promote the creation of jobs;
- Aiding and providing communities with consultancy services in renewable energy, specializing in business development and management, law, strategic planning, and leadership;
- Providing integral guidance and advisement to U.S. companies doing or planning to do business in Brazil seize new business and investment opportunities; and,
- Network with industry peers, competitors, and prospective clients to continuously develop new business opportunities.

In addition to her professional plan and statement, the Petitioner submitted a business plan for her proposed company, [REDACTED] as well as 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 demonstrate that her proposed endeavor would have potential prospect impact, significant potential to employ U.S. workers, or other substantial positive economic effects, and specifically noted deficiencies in her proposed company's business plan. 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, where she stated as follows:

My overall proposed endeavor in the United States is to continue working as an Entrepreneur in the Import/Export industry. I have great experience in logistics and import export with a portion of it being in supervisory and managerial roles. My expertise in this area will enable the growth of American companies that I will work for. This will increase business revenues and thus boost the flow of money throughout the United States, contributing to the U.S. gross domestic product (GDP).

...

Hence, my proposed endeavor will rightly address a growing gap within the U.S. business marketplace, one which, if it keeps growing, will negatively affect the economic capabilities of the nation at large, especially since the country's financial sector, and investment actions, are key to its economic and social development.

She also submitted additional letters of support, 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 Appellant." The Petitioner also asserts, through counsel, that the Director disregarded the evidence submitted, and provides a brief emphasizing her qualifications as an entrepreneur 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).

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 demonstrated that the proposed endeavor is of national importance. In her personal statement submitted in support of the petition, the Petitioner indicated her intent to work as an entrepreneur in the United States in the areas of "entrepreneurship, business administration, business management, logistical control, import/export, business consulting, business development, strategic planning, negotiations, and leadership, as well as international tax and

civil law.” She submitted a business plan for her proposed company, described by her counsel as a “business, logistical operations, and commercial consulting firm,” and claimed it would provide advice to companies engaged in the wood pellet sector. In response to the RFE, however, she submitted documentation establishing her incorporation of a different company, [REDACTED] in February 2022, whose objective is identified as “global consultant and commercial representation” in the company’s articles of organization.

The Petitioner maintains that her proposed endeavor to establish [REDACTED] a wood pellet consultancy company, has national importance because it will impact the renewable energy sector in the United States. In response to the RFE, however, she claimed she would continue to work as an entrepreneur in the field of import/export, and submitted evidence demonstrating her formation of an entirely different company that is not explained or discussed in the record. The Petitioner must resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Because of these unresolved discrepancies, 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 Dhanasar*, 26 I&N Dec. at 889. While it may include one or more of the endeavors 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.²

Throughout the record and in her personal statements, the Petitioner points to her background, education, and experience in her field.³ The Petitioner also provided several letters of support that discuss her entrepreneurship experience and professional accomplishments in Brazil. 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 entrepreneurship has “inherent value” and offers ripple effects upon commercial markets, foreign investment activities, and U.S. business and commercial sectors. Further, the Petitioner offered information, including articles and reports, about the importance of entrepreneurship and small businesses and their crucial role in the U.S. economy. While the submitted information and articles provide useful background information, they are of limited value in this matter, as the Petitioner’s specific proposed endeavor

² 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). Because the Petitioner’s new company was established subsequent to the petition’s filing, we will not discuss it further.

³ While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

remains unclear.⁴ 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 as an entrepreneur in one or more of the areas identified would affect the U.S. economy more broadly consistent with national importance.

The record contains an expert opinion letter from a professor of marketing and management at [redacted] University 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 an entrepreneur in Brazil, his findings stem from the significance of entrepreneurship in the import/export industry, particularly in relation to U.S. companies seeking to engage in trade with Brazil or Latin American companies. 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, originally identified as establishing a wood pellet consulting company in the United States, nor does the record include adequate corroborating evidence, to show that the Petitioner’s specific proposed work as an entrepreneur offers broader implications in her field or substantial positive economic effects for our nation that rise to the level of national importance.

We also reviewed the Petitioner’s business plan, including its revenue and employment projections. The Petitioner did not sufficiently describe the origin or basis for these projections and, even if she had, they would not establish the national importance of the proposed endeavor.⁵ As we explained in *Dhanasar*, “[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.” *See Dhanasar*, 26 I&N Dec. at 890. Here, 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 directly attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s proposed endeavor would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.*

While the Petitioner’s statements reflect her intention to provide valuable consulting services for her clients or employers in what appears to be a wide variety of areas, she has not offered sufficient information and evidence to identify her proposed endeavor with specificity or otherwise demonstrate

⁴ We further note that the Petitioner’s counsel refers to these reports and articles throughout the record, asserting that entrepreneurship, particularly immigrant entrepreneurship, impacts the U.S. people and its economy. On appeal, counsel emphasizes the Petitioner’s experience as an entrepreneur and generally asserts that her proposed endeavor will help the national economy by providing crucial consulting services to U.S. companies in a variety of fields, including logistics and import/export. 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.

⁵ The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

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 id.* at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her clientele or employers to impact the U.S. economy more broadly at a level commensurate with national importance.

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.