



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

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

In Re: 33171461

Date: SEP. 12, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a business manager, seeks second preference 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they 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:

¹ *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualifies for underlying EB-2 classification as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner initially indicated that her proposed endeavor in the United States “is to run an e-commerce company focused on manufacturing accessible kitchen appliances in order to increase the ease-of-access of kitchens and other types of housing infrastructure for people living with physical disabilities.” Specifically, she indicated that her company would focus on developing automatic doors and cabinets to facilitate easier movement within kitchen environments for people living with physical disabilities. She stated that she is initially “looking to have a manufacturing center in the United States and distribute nationwide through networks of assemblers who install to [company] standards” and the “next step would be to export the product made in the United States, employing local labor to Europe, Asia, and Latin America.” The Petitioner stated that she will run her company, from a base in Minnesota.

In addition, the Petitioner stated that her proposed endeavor is of national importance as her “plan to develop a company that creates accessible kitchen supplies and layouts supports maintaining and improving the quality of life for people with disabilities in the United States.” She indicated that her proposed endeavor aligns with the goals of the Biden Administration and institutions like the Center for Disease Control and Prevention (CDC), as well as the Americans with Disabilities Act (ADA). In response to the RFE, the Petitioner stated that her endeavor “addresses key national priorities by fostering inclusivity and accessibility through innovative kitchen designs tailored for people with disabilities, while simultaneously driving economic growth and job creation in the United States. She indicated that her proposed endeavor has a far-reaching impact on the nation as a whole as it addresses the critical issues of inclusivity, accessibility, and sustainability. She reiterated that the endeavor is not confined to a single organization or locality as it aims to establish a manufacturing center in the United States with a distribution network that spans nationwide. She further indicated that the endeavor will create job opportunities and stimulate economic growth on a national scale as it will employ local labor and collaboration with architects, designers, and carpenters. Finally, the Petitioner emphasized that her proposed endeavor is “not merely about creating a product[,] it is about fostering an inclusive society that aligns with governmental priorities, thereby contributing to the national interest in a significant manner.”

The Petitioner submitted personal statements, a business plan, a letter of interest for investment, letters of recommendation, reports and articles, and education and credential information on the record.² The Petitioner's business plan included information about the need for the company's services, market analyses, business strategies, marketing strategies, an operational plan, a financial plan, an analysis on the company's national-level impact, and specifically indicated that the company's ultimate goal is to "bring joy to people who need it the most by creating or adapting home spaces for families and individuals affected by autism spectrum disorder or other physical and mental impediments that limit their mobility, development, or communication." It further indicated that the company "will provide kitchen design services to individuals and families looking to improve accessibility and living conditions . . . [to] include manufacturing kitchen furniture and countertops made of granite or quartz to ensure the client receives a personalized project from start to finish."

With respect to staffing, the business plan identified 12 employees required to operate the proposed endeavor—the Petitioner as the chief executive officer, an accounting manager, six carpenters, an administrative assistant, a marketing manager, a sales representative, and a project manager. It further indicated that it would hire 5 employees in the first year—to include two carpenters—hire an additional carpenter and two other employees the second year, hire an additional carpenter and one other employee the third year, and hire one additional employee the fourth and fifth years, until reaching 12 total employees in year five. It also indicated that the company will use the services of independent contractors, such as cabinet makers, an accountant, and legal assistance in addition to the 12 in-house employees. With respect to revenue, the business plan offered total sales projections of \$721,250 in year one, \$1,183,750 in year two, \$1,548,750 in year three, \$1,816,250 in year four, and \$2,067,500 in year five.

The Petitioner provided articles and reports³ discussing the importance of fostering an inclusive society, particularly among those living with physical disabilities in the United States, and the specific challenges faced by a marginalized community. The Petitioner also submitted published materials by the White House and other government agencies to show that her proposed endeavor is nationally important because it promotes diversity, equity, and inclusion and aims to serve a community that has been historically underserved—individuals with disabilities, as well as the aging U.S. population—by providing them with kitchens tailored to meet their needs, which is closely tied to the U.S. government's interests.

The Director determined that the Petitioner established the proposed endeavor's substantial merit but not its national importance. Regarding substantial merit, the endeavor's merits may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889.

On appeal, the Petitioner specifically references the Director's comments indicating that the evidence in the record outlining her job as a business manager is too vague and appears to contain errors, and explains that the record includes a 48-page detailed professional business plan containing extensive information regarding the nature and scope of her proposed endeavor, a detailed description of the

² This is a non-exhaustive list of evidence the Petitioner submitted in the record. While we may not discuss every document submitted, we have reviewed and considered each one.

³ The Petitioner submitted numerous articles and reports in the record and each one has been considered.

company's services, a personnel plan with hiring projections, a financial forecast, and the national-level impact of her proposed endeavor. She generally asserts that the Director did not properly evaluate the record and impermissibly focused on whether the Petitioner's endeavor would result in broader implications to the accessible interior design field and cabinet manufacturing industry, without considering the prospective impact of her endeavor to societal welfare and its implications on a matter that a United States government entity has determined is of national importance. The Petitioner reiterates information found in her statements and the business plan in the record pertaining to the prospective national impact her proposed endeavor holds for the United States from an economic benefits standpoint and a social welfare standpoint.

Upon de novo review, we agree with the Director that the Petitioner's endeavor has substantial merit but does not satisfy the national importance element of *Dhanasar*'s first prong. If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs. *See id.* (requiring that petitioners establish all three prongs in order to establish eligibility).

The Petitioner maintains on appeal that her proposed work as a business manager of accessible interior design and cabinet manufacturing, primarily kitchens, is of national importance to the United States. 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." *See id.* 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. In this case, we recognize that there may be a lack of accessible kitchens in homes within the United States, as well as other accessibility issues affecting individuals with mental or physical disabilities, as reported in the articles and reports submitted. However, while the government initiatives acknowledge the need to provide greater inclusivity and accessibility for these individuals in the United States, they do not indicate that government has an interest in the Petitioner's planned business activities to establish an accessible interior design services and cabinet manufacturing company. The Petitioner has not shown how her proposed endeavor specifically has national implications within her particular field.

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. Although the Petitioner's statements reflect her intention to provide valuable interior design and cabinet manufacturing services specifically to address the inclusivity and accessibility needs of her clients living with mental and physical disabilities, she has not offered sufficient information and evidence to 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 his field more broadly. *Id.* at 893. Here, we conclude that the record does not show the Petitioner's proposed endeavor stands to sufficiently extend beyond her company and its future clients to impact the field of accessible interior design, the cabinet manufacturing industry, societal welfare, U.S public health, 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 the U.S. Specifically, she has not shown that her company's future staffing levels, business activity, and associated tax revenue stand to provide substantial economic benefits in Minnesota or the U.S. While the projected revenues outlined in the business plan indicate that her company has growth potential, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her endeavor stands to generate jobs for U.S. workers, she has not offered sufficient evidence that the area where her company operates is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. Moreover, while the Petitioner contends that her proposed endeavor will extend beyond Minnesota to Nevada and Florida, and later expand to Texas, Utah, Illinois, New York, and New Jersey, she has not shown that the prospective impact of the accessible interior design and cabinetry manufacturing services performed by her company represents a significant share of the industry. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

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.

ORDER: The appeal is dismissed.