U.S. Citizenship and Immigration Services

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

In Re: 31843397

Date: SEP. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an operations manager, 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 the record did not establish 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 pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. Our precedent decision in *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:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

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

- On balance, waiving the job offer requirement would benefit the United States.

*Id.*

## II. ANALYSIS

The Petitioner intends to come to the United States to conduct her proposed endeavor as a "General and Operations Manager." She states she will work for an "Auto Parts Wholesaling Services firm" that is "planned to be headquartered in Florida." Specifically, the Petitioner proposed she would "steer the enterprise" utilizing her prior experience "in international purchasing, supplier sourcing, administrative and financial management, human resources management, financial planning and reporting, strategic leadership, health and safety management, accounting, and software proficiency."

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director further concluded that although the Petitioner had established the substantial merit of her proposed endeavor, she had not demonstrated its national importance, that she is well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. We agree that the Petitioner has not established that her proposed endeavor has national importance as required under the first prong of the *Dhanasar* framework and will dismiss the appeal accordingly.[2]

As a preliminary matter, on appeal, the Petitioner alleges that the Director "imposed novel substantive and evidentiary requirements beyond those set forth in regulations." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts on appeal that she has provided evidence sufficient to demonstrate her eligibility for a national interest waiver, she does not further explain or identify any specific instance in which the Director applied requirements or a standard of proof other than the preponderance of evidence in denying the petition.

The Petitioner further argues the Director "did not give due regard to" certain pieces of evidence, including: her business plan and resume, evidence of her work in the field, letters of recommendation, and industry reports and articles. However, the Director noted that their decision was the result of "a review of the petition and all of the supporting evidence." Throughout the decision, the Director also specifically referenced the evidence identified by the Petitioner. Finally, we have reviewed the entirety of the record de novo in rendering our decision on the Petitioner's appeal.

In reviewing the merits of the Petitioner's claim of eligibility for a national interest waiver, the Director concluded that the Petitioner did not establish that her proposed endeavor has national importance as required under the first prong of the *Dhanasar* framework. The Director found the record did not

[2] 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.

sufficiently establish the prospective impact of the Petitioner's proposed endeavor, such as broad implications to her overall field or substantial economic benefits to the United States. The first prong of the *Dhanasar* framework. substantial merit and national importance, focuses on the specific endeavor that the individual 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 whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

Upon review of the record, we find that the Petitioner has not established her proposed endeavor has national importance. When determining whether a proposed endeavor would have substantial merit or national importance, the relevant question is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889-890. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual ("The term 'endeavor' is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation."). 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." 26 I&N Dec. at 889. We acknowledge the various documents the Petitioner provided regarding general and operations managers and their functions within businesses and organizations. The Petitioner argues that her proposed endeavor as an operations manager for an auto parts wholesaling firm will have "a broad impact in the field with her work in international purchasing and management." The Petitioner further asserts her endeavor will "directly impact the domestic job market, as improved industry patterns culminate in higher business demands, and an increase in the creation of new jobs and workforce dependability." However, the articles submitted, which describe the responsibilities of a general and operations manager, do not establish her specific proposed endeavor would have a broader impact on the auto parts wholesale or international purchasing fields. Although the Petitioner's proposed endeavor has the potential to provide valuable services to her clients, she did not establish it will have substantial national implications or have a broader impact on her field, extending beyond her company and the individuals she directly serves.

Similarly, the record does not establish the Petitioner's proposed endeavor will have substantial positive impacts on the U.S. economy. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from her proposed endeavor would rise to the level of national importance. An endeavor may have national importance if it "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area . . . ." *Id.* at 890. In her business plan and statement, the Petitioner indicated her proposed company would generate 20 jobs and generate $1.54 million dollars in wages to U.S. workers and $5.2 million dollars in revenue in the first five years of business. However, the business plan does not provide sufficient explanation for the basis of these projections. Further, even if sufficient basis were provided for the proposed endeavor's revenue and job creation projections, these figures do not establish that the Petitioner's company would operate on a scale rising to the level of national importance. The Petitioner asserts her proposed endeavor will have "immensely positive and ripple economic effects"; however, she has not explained how these effects will be achieved nor the specifics of the impact on

the economy. Upon de novo review, the Petitioner did not establish her proposed endeavor would have substantial positive economic effects.

Accordingly, we find that the record does not demonstrate national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, and the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under 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).

## 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.

**ORDER:** The appeal is dismissed.