



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 33947279

Date: SEPT. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an architect and urban planner, 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 Petitioner did not establish that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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 for the underlying classification, 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. 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. 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 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
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director found that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.² We agree that the record supports that determination.

The issue on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director determined that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further determined that the Petitioner did not establish that she is well-positioned to advance the proposed endeavor under *Dhanasar's* second prong, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification under *Dhanasar's* third prong. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.³

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 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 specific endeavor that the foreign national proposes to undertake." Id.

The Petitioner proposes to establish an architecture, urban planning, and sustainability consulting business in the [] area of Florida for which she would be its chief executive officer. Her business would provide services focused on project management for government and private construction projects, in particular renovations of aging public school buildings. For its projects, her business intends to collaborate with government entities and private developers to implement "resilient urban strategies" which emphasize sustainability, utilize advanced technologies, and create environmentally

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

² To demonstrate she is an advanced degree professional, the Petitioner submitted her diploma, her academic transcript, an academic evaluation, and an employment verification letter. The record demonstrates that she holds the foreign equivalent of a U.S. bachelor's degree followed by more than five years of progressive experience in her specialty. See 8 C.F.R. § 204.5(k)(3).

³ While we may not discuss every document submitted, we have reviewed and considered each one.

conscious spaces. We agree with the Director that the Petitioner's proposed endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director determined that the Petitioner did not establish that her proposed endeavor is of national importance. The Director found that the Petitioner did not demonstrate her proposed endeavor would extend beyond her business and clients to have a potential prospective impact on her field more broadly. The Director further determined that the Petitioner did not show how her work with her architecture, urban planning, and sustainability consulting business has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects to the national or regional economy as contemplated by Dhanasar.

On appeal, the Petitioner contends that the Director made several errors in reviewing the evidence and that the evidence demonstrates she meets the requirements under Dhanasar. In particular, the Petitioner maintains that her business plan clearly sets out the national importance of her proposed endeavor, including its potential significant economic and social impacts on the local community and its potential impact on matters which are the subject of national initiatives and described by government entities as nationally important. In addition, the Petitioner claims that the Director's decision lacked proper analysis in determining her proposed endeavor is not of national importance.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (*Comm'r* 1989). The Director, in evaluating whether the Petitioner had established that she meets the first prong of the Dhanasar framework, properly analyzed and weighed all the evidence but determined that the evidence overall lacked probative value. See *Matter of Chawathe*, 25 I&N Dec. at 376. Upon de novo review, the Petitioner has not demonstrated that the evidence submitted establishes her eligibility by a preponderance of the evidence, as discussed below.

The Petitioner has not sufficiently documented the potential prospective impact of her proposed endeavor, including the asserted impact on her field and the economic and social benefits to the United States and the areas her business intends to serve. The Petitioner's statements and business plan stress the importance of the construction industry to the U.S. economy, the expected increase in demand for construction-related services, and the Petitioner's business helping to fill a shortage of workers in fields related to construction; re-building infrastructure; and science, technology, engineering, and math (STEM). To support the Petitioner's statements and business plan, the record includes articles and reports related to the architecture field and its expected increase in growth; technology in architecture; marketing of architecture firms; benefits of the construction industry to the U.S. economy; tourism in the [redacted] Florida area; Florida employment trends; expected growth of the construction industry in the United States and a shortage of workers in the construction field; and the benefits of immigrants workers and immigrant entrepreneurs.

We recognize the importance of the architecture and urban planning fields and related careers, and the significant contributions from immigrants who have become successful entrepreneurs. However,

merely working in the architecture and urban planning fields or starting an architecture, urban planning, and sustainability consulting services business in a growing community and in a field with a shortage of workers is insufficient to establish the national importance of the proposed endeavor. The U.S. Department of Labor, through the labor certification process, directly addresses such shortages of qualified workers. Moreover, the growth and importance of an industry are not sufficient to meet the national importance requirement under the Dhanasar framework. Instead of focusing on the importance of an industry or field, or a shortage of workers in a field, we focus on the “the specific endeavor that the foreign national proposes to undertake.” Id. at 889.

In Dhanasar, we 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. Here, the evidence does not suggest that the Petitioner’s proposed endeavor to establish an architecture, urban planning, and sustainability consulting business and hiring employees in a growing industry with a shortage of workers would impact the fields or the U.S. economy more broadly.

The Petitioner’s business plan claims her business has significant potential to create jobs and have other substantial positive economic effects on the local [redacted] Florida economy. Her business expects to attract investments from other related industries, such as construction suppliers and consultants, and to contribute to community revitalization by working on public infrastructure projects, such as parks, community centers, and schools. To support her claims, the business plan discusses the business’ location in [redacted] Florida, an area with a demand for infrastructure projects; the Petitioner’s investment of \$50,000 into the business; a market analysis of the architecture industry; services to be offered by her business; the expected growth of the construction industry; and the business’ projected marketing, personnel, and financial forecasts.

The Petitioner has not provided corroborating independent and objective evidence to support her claims that her business’ activities stand to provide substantial economic benefits to Florida communities or the United States. For instance, the business plan projects that in five years the business will hire 22 direct employees, generate an additional 43 indirect jobs, and pay over \$700,000 in taxes. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that paying over \$700,000 in taxes and creating 22 direct jobs and 43 indirect jobs over a five-year period rises to the level of national importance. Also, without sufficient documentary evidence that her proposed job duties as the owner and chief executive officer of her architecture, urban planning, and sustainability consulting business would impact the fields more broadly, rather than benefiting her business and her clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

Next, the Petitioner claims that by providing training and internship opportunities to her staff and local students, her business would create more qualified workers in her field, promote STEM education, and foster innovation in STEM, thereby impacting her field more broadly. However, 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. *Matter of Dhanasar*, 26 I&N Dec. at 893. We noted that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *Id.* at 889. Likewise, the Petitioner's intent to transfer her professional knowledge about architecture, urban planning, and the use of technologies in her field to her staff and local students through trainings and internships does not demonstrate an impact on the architecture, urban planning, construction, or STEM fields more broadly or rise to the level of national importance as contemplated by *Dhanasar*.

Lastly, the Petitioner argues that her endeavor impacts matters that the government has described as having national importance or is the subject of national initiatives. The Petitioner contends that when reviewing the evidence, we should consider “the broader impacts and implications of the proposed endeavor on national interests, irrespective of direct references in government initiatives.” The Petitioner's appeal neither specifies which government matters her proposed endeavor would impact nor explains how her endeavor has the claimed broader implications impacting government matters. Her initial petition claims that her endeavor aligns with the U.S. government initiatives supporting infrastructure investment, professionals in STEM fields, and the advancement of critical and emerging technologies. She claims that her business' services would contribute to infrastructure development in local communities, such as schools, community centers, healthcare facilities, and public parks. In addition, her business' use of artificial intelligence and machine learning technologies in its architectural design process aligns with the U.S. government's efforts to foster technological advancements in critical and emerging technologies. She further indicates her promotion of STEM education would strengthen the local STEM talent pool which has a shortage of professionals. To support her assertions, the Petitioner submitted articles, including a 2015 report on U.S. digital technology competitiveness, gender gap in STEM profession, global competitiveness, use of technology in the architecture industry, and the benefits of diversity in the workforce.

While her proposed endeavor may be related to infrastructure development, provide training to STEM professionals and students, and utilize technology classified by the government as critical and emerging, that alone does not mean her proposed business rises to the level of national importance. The proposed endeavor itself must still meet the level of prospective impact set forth in *Dhanasar*. The importance of U.S. government initiatives that support investment in infrastructure, STEM professionals, and critical and emerging technologies is not in dispute, but their overall significance does not establish the national importance of the Petitioner's proposed endeavor in particular. The articles and reports show the importance of investment in infrastructure, STEM professionals, and critical and emerging technologies; however, it does not follow that an architecture, urban planning, and sustainability consulting business using digital technologies for its projects and offering training for potential STEM professionals is of national importance. As discussed earlier, working in or establishing a business in an important field is insufficient on its own to establish the national importance of the proposed endeavor. Instead, we focus on the “the specific endeavor that the foreign national proposes to undertake” and consider the endeavor's “potential prospective impact.” *Id.* at 889.

Based on the above, the Petitioner has not demonstrated that her proposed endeavor has the potential to extend beyond her business and her future clients to impact her field, the U.S. economy, social

welfare, or nationally important matters more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as the owner of her proposed architecture, urban planning, and sustainability consulting business offers the claimed innovations that contribute to advancements in her industry or otherwise has broader implications for her field. The economic and social welfare benefits that the Petitioner claims depend on numerous factors, and she did not offer a sufficiently direct evidentiary tie between her architecture, urban planning, and sustainability consulting work and the claimed potential benefits.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver. This identified basis for dismissal is dispositive of the Petitioner's appeal, and therefore we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility under the second and third prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting 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 established eligibility under the requisite first prong of the Dhanasar analytical framework, she is not eligible for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.