



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

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

In Re: 25232693

Date: FEB. 08, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an environmental specialist, 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 Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of a 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<sup>1</sup>, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

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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 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 determined that the Petitioner is a member of the professions holding an advanced degree.<sup>2</sup> The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner asserts that she has nearly 20 years of experience in managing environmental activities of businesses and has held positions with local county government in the United States and in Brazil monitoring and enforcing compliance with environmental policies. The Petitioner's proposed endeavor related to environmental protection is to provide the following services:

- Consulting with public administration on the research, development and analysis of the efficiency of public policies.
- Consulting with private companies on reducing carbon emissions and environmental impact, receiving green business certificates, environmental research and testing, and compliance with local, state and federal laws.
- Working with public administration and environmental agencies at local, state and federal levels, as well as international organizations (United Nations), developing and implementing environmental policies on preservation and conservation of natural resources, climate change prevention and mitigation of impacts, reduction of greenhouse gas emissions, deforestation and reforestation.

The Petitioner states that she will work through her own business, [REDACTED] established on [REDACTED] 2020, just prior to filing the I-140 petition. She states that she will “work as an environmental consultant to help U.S. companies reduce the environmental impact of their projects in various sectors, including gas industry, agrobusiness, construction, mining, waste disposal and others.” She asserts that this work will “contribute in the elimination of environmental damage in the United States and in the accurate assessment of the extent of environmental damage done by business and individuals.”

### A. Substantial Merit and National Importance

The first prong, 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

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<sup>2</sup> The record demonstrates that the Petitioner earned a master of public policy degree, with a concentration in environmental policy, from [REDACTED] University in 2019. She also earned an undergraduate diploma in biological sciences in 2006 from the State University of [REDACTED] in Brazil.

The Director determined that the Petitioner has demonstrated that her proposed endeavor has substantial merit and national importance. The record includes evidence of the Petitioner's academic credentials, her resume, letters of recommendation, and several articles discussing the importance of environmental policy to the United States. The letters and articles support the Director's determination that the Petitioner's proposed endeavor, aimed at reducing pollution and minimizing environmental damage, has substantial merit and is of national importance. Accordingly, we agree with the Director that the Petitioner meets the first prong of the *Dhanasar* framework.

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The Director determined that the Petitioner had not submitted sufficient evidence to establish that she is well positioned to advance her proposed endeavor. He issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence to establish that she meets the second *Dhanasar* prong. In the RFE, he noted that the record demonstrated that her education and experience led to past success in Brazil, but the record did not include evidence that the Petitioner has entrepreneurial experience or the ability to finance her proposed endeavor.

The Petitioner's response to the RFE includes a detailed business plan for [REDACTED] [REDACTED] letters of intent from three companies intending to contract with the Petitioner's business, and the Petitioner's personal statement. In her personal statement, the Petitioner states that she finances her proposed endeavor with income earned organizing fundraisers for a local nonprofit organization. She also states that she is actively promoting her business through "pro-bono activities to promote environmental awareness and show potential clients what my business can offer."

After reviewing the Petitioner's RFE response, the Director concluded that the Petitioner had not demonstrated that she is well positioned to advance her proposed endeavor. He again noted that the Petitioner has an undergraduate degree in biology and a record of success as an environmental specialist in Brazil. However, he determined that this background is not sufficient to demonstrate her ability to advance the proposed endeavor in the United States, where legal and public policy differ from Brazil. He stated that the three letters of interest "are identical in nature and do not spell out any specific services." He noted that the letters are dated June 2022, after the filing of the petition, and do not establish the Petitioner's eligibility at the time of filing.<sup>3</sup>

On appeal, the Petitioner asserts that she has demonstrated a track record of success in her field, a plan for future activities, progress toward achieving her proposed endeavor, and interest from potential customers. She cites to evidence already in the record and asserts that this evidence establishes that she is well positioned to advance her proposed endeavor.

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<sup>3</sup> A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The Petitioner's business, [REDACTED] was registered on [REDACTED] 2020, nine days before the petition was filed. The business plan is dated July 2022, a year and a half after the petition's filing, and, as noted by the Director, the letters of interest in doing business with the Petitioner are dated June 2022. These documents were not created until after the Director issued the RFE in February 2022. Accordingly, we agree with the Director that this evidence does not demonstrate the Petitioner's eligibility at the time of filing, as required by 8 C.F.R. §§ 103.2(b)(1). Additionally, even if the letters of interest had been submitted with the initial filing, we also agree with the Director that the letters do not include a description of the services the Petitioner offers to demonstrate that the services relate to her proposed endeavor as an environmental specialist.

To support her claimed record of success in the field, the Petitioner relies on six letters of recommendation from her former colleagues and quotes directly from these letters on appeal. However, the letters do not provide specific examples indicating that the Petitioner's work has impacted the field or led to the creation of an environmental policy or change in existing policy or practice.<sup>4</sup> For example, one letter from a fellow undergraduate student discusses the Petitioner's career interests and work ethic but does not describe the Petitioner's work as an environmental specialist or identify any of her specific achievements.

Although some of the letters mention the Petitioner's accomplishments in her work, they do not provide sufficient detail to demonstrate a track record of success. One letter, from a former colleague at the Brazilian Forest Service, describes the Petitioner's knowledge in biology and experience in public policy, and discusses the Petitioner's selection as a representative of their agency during an international seminar in China. The letter does not describe the seminar or its topics, nor does it explain how the Petitioner's representation resulted in an environmental impact. Another letter, from a former colleague at [REDACTED] City Hall in Brazil, describes the Petitioner's "development and implementation of a modern reward system based on productivity, performance, and affinity to work." The letter does not explain how the Petitioner's involvement in a workplace reward system is related to environmental policy. While this letter also states that the Petitioner "worked hard for the monitory sector to go computerized," it does not discuss the Petitioner's specific role in computerization beyond providing support or describe the impact of computerization on environmental policy. Similarly, a letter from the Petitioner's manager during her internship with the [REDACTED] Air Quality Department, states that the Petitioner "worked on the [REDACTED], giving the local municipalities and their leaders a tool to help understand their carbon footprint." The letter does not describe the Petitioner's specific role in the development of this tool or explain how the tool resulted in an environmental impact.

In her personal statement, the Petitioner describes her progress toward achieving her proposed endeavor. She states that she is "assisting in reducing the environmental impacts of some local sports events by offsetting their emissions and implementing a recycle/upcycle program for textile waste in some local small business." The Petitioner did not submit evidence to support this claim, such as agreements with the small businesses or sports event promoters or venues, testimonials from these clients, or detailed descriptions of the intended environmental programs to be implemented.

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<sup>4</sup> While we discuss a sampling of these letters, we have reviewed and considered each one.

Assertions must be supported with relevant, probative, and credible evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

As noted above, the Petitioner describes her proposed endeavor as consulting with private companies on their environmental impact, as well as with public administration, environmental agencies, and international organizations on the research, development and analysis of the efficiency of public policies. She describes her intention to work with local and federal governments and international organizations in two of her three stated goals, making this a key element of her proposed endeavor. The Petitioner does not mention, in either her personal statement or her business plan, what steps she has taken toward working with public administration, environmental agencies or international organizations, all key aspects of her proposed endeavor. The business plan identifies only two major markets in the industry – private industries and households – and does not discuss the Petitioner’s planned involvement with local, federal or international government bodies, as she describes in her proposed endeavor. Additionally, the letters from potential customers are all from private industry. The record lacks evidence of interest from public administration, environmental agencies or international organizations, and of the Petitioner’s progress toward achieving her proposed endeavor in this regard.

The record demonstrates that the Petitioner has an academic background and successful professional career working with environmental issues, but she has not shown that this work renders her well positioned to advance her specific proposed endeavor as an environmental specialist in business and policy consulting. We examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed endeavor, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that her work has served as an impetus for progress in the development or change of environmental policy. Nor does the evidence otherwise show that her work constitutes a record of success or progress in minimizing environmental impacts.

As the record is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework.

### C. Whether on Balance a Waiver is Beneficial

The third prong requires a petitioner to demonstrate 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual’s qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Id.* at 890-91.

Here, the Petitioner claims that she is eligible for a waiver due to her knowledge and experience, potential job creation resulting from her business, and the impracticality of labor certification. However, as the Petitioner has not established that she is well positioned to advance her endeavor as required by the second prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in 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.