



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

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

In Re: 24993289

Date: MAR. 1, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a sales manager in the field of business, 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 has not established that her proposed endeavor is of national importance and, therefore, she is not eligible for a national interest waiver as a matter of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that the Director has imposed novel substantive and evidentiary requirements beyond those set forth in the regulations, did not properly review every piece of evidence submitted, and made an erroneous conclusion.

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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.¹ 8 C.F.R. § 204.5(k)(2).

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 discretion², 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.

II. ANALYSIS

A. Advanced Degree Professional

The Director did not include a determination of the Petitioner’s eligibility for EB-2 visa classification in his decision. The Petitioner claimed eligibility as a member of the professions holding an advanced degree. The record includes (1) a copy of the Petitioner’s diploma from Universidade [REDACTED] in Brazil, awarding her the title of Bachelor of Law, (2) a copy of her university record, and (3) an education evaluation concluding that this degree is the equivalent of a U.S. bachelor’s degree in legal studies. In addition, the Petitioner submitted a letter from her former employer, [REDACTED] [REDACTED] documenting her employment with the company as a “full seller” from May 2007 to August 2018. The Petitioner also submitted a position description of a seller. The record establishes the Petitioner’s qualification as a member of the professions holding an advanced degree based on her foreign equivalent degree of a U.S. bachelor’s degree followed by five years of progressive experience in the specialty. Therefore, the Petitioner established her eligibility for EB-2 immigrant visa classification.

B. National Interest Waiver

The first prong of the *Dhanasar* analytical 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.

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

² 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 Director did not include a determination of substantial merit of the Petitioner's proposed endeavor in his decision. The Petitioner proposed to work as a sales manager in the field of business. The Petitioner claims that her proposed endeavor will have "multiple positive effects on the U.S. marketplace, thus enhancing business operations on behalf of the nation and contributing to a streamlined economic landscape." As such, we conclude that the Petitioner's proposed work has substantial merit.

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 Dhanasar*, 26 I&N Dec. at 889. In addition, we indicated 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.

The Petitioner initially indicated that her proposed endeavor is to open her own sales consultancy business and continue working as a sales manager with American companies that require her specialized knowledge, experience, and expertise working in the fields of sales management, business administration, strategic planning, negotiations, business development, strategic partnerships, financial analysis, customer service, logistics, law, and leadership. The Petitioner initially submitted (1) letters of support from her former colleagues, (2) an expert opinion letter from a professor of marketing at [redacted] State University, (3) summary report for sales managers, and (4) various articles about sales integration for revenue growth, the importance of international business, the important role of sales in every business and in an organization, ways to survive the sales talent shortage, and a sales talent crisis.

The letters of support from her former colleagues talk about the significant impact and value on a variety of projects completed by the Petitioner while working for her former employer, [redacted]. Therefore, it appears that these letters were submitted to support the second prong to demonstrate that the Petitioner is well positioned to advance the proposed endeavor. The professor states that it would be a significant economic loss for the United States to miss the opportunity to benefit from the Petitioner's advanced knowledge and skills in sales management. As such, it appears that the expert opinion letter from the professor was submitted to support the third prong to demonstrate that, on balance, waiving the job offer requirement would benefit the United States. The summary report for sales managers and various articles do not directly relate to the Petitioner's specific endeavor of providing sales consultancy services to companies as a sales manager in the field of business. In the request for evidence (RFE), the Director notified the Petitioner that she had not established that her initial proposed endeavor was of national importance.

In response to the RFE, the Petitioner proposed to start a trading company, [redacted] [redacted] in the fields of sales and international law to offer services related to business trading, sales, and marketing to small and medium sized companies in the United States and serve as the company's chief executive officer (CEO).

In response to the RFE, the Petitioner submitted (1) letters of support from her former colleagues, (2) summary report and statistics about general and operations managers, (3) a study about future global shortages for skilled workers, and (4) various articles about the history and future of operations, fostering global competence, operations management, the importance of international companies, the benefits of international investment, the impacts of foreign investment to the U.S. economy, operational innovation, human resource management, companies' failure and a potential for improvement, the failure of Wal-Mart Stores Inc. in Brazil, and the failure of big brands internationally.

The letters of support from her former colleagues provide a few examples of projects completed by the Petitioner while working for her former employer [redacted] and talk about the important role the Petitioner played in the company. As such, it appears that these letters were submitted to support the second prong to demonstrate that the Petitioner is well positioned to advance the proposed endeavor. Regarding the summary report and statistics for general and operation managers, the study about future global shortages for skilled workers, and various articles, the documents do not directly relate to the Petitioner's specific endeavor of starting a trading company in the fields of sales and international law and managing that company as its CEO. For example, the articles about operations management and human resources management discuss the importance of the profession in which the Petitioner will work, but the Petitioner did not explain how they relate to her endeavor of starting a trading company in the fields of sales and international law and managing that company as its CEO.

The Petitioner submitted articles about a sales talent shortage and a study about future global shortages for skilled workers. The U.S. Department of Labor addresses worker shortages through the labor certification process, and, therefore, a shortage of qualified professionals alone is not sufficient to demonstrate eligibility for the national interest waiver. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 218 (Act. Assoc. Comm'r 1998).

The RFE response also included Articles of Organization, Limited Liability Company Operating Agreement, and a business plan for the Petitioner's newly created trading company, [redacted] [redacted]. The business plan states that the company will act as an intermediary to small and medium sized companies and will help connect buyers and sellers, facilitating commercial operations involving international clients. The business plan also indicates that the company plans to provide broker services, sales consulting services, and market analysis to its customers. However, the business plan does not identify prospective customers or the type of projects and the industry the company would serve. As such, the business plan does not sufficiently demonstrate the potential implications of services to be provided by the company to its customers within a particular field or industry.

As for the economic value and job creation, the business plan includes projections of \$666,000 in total revenue and hiring 9 full-time employees and 6 contractors by the fifth year of operations. But the business plan does not provide sufficient detail of the basis for these projections or adequately explain how these income and staffing targets will be realized. Therefore, it does not sufficiently demonstrate that the Petitioner's business will have an impact on a particular industry or the U.S. economy at a level commensurate with national importance. In addition, the Petitioner asserts that her company will boost local economies, specifically in the underserved business zones of several states across the

United States. The business plan states that the headquarters and its first branch office of the company will be based in [redacted] Florida, and that the company plans to open three branch offices across the United States over the period of five years. However, the record does not specify the locations of the headquarters and three branch offices or provide unemployment statistics for the areas where the company will principally be doing business or other sufficient evidence. Therefore, the record does not sufficiently establish that the company will be operating its business in the underserved business zones or that the endeavor would otherwise have substantial positive economic effects.

On appeal, the Petitioner repeats that her proposed endeavor is national in scope because her professional activities will “generate substantial ripple effects upon key commercial and business activities on behalf of the United States, serving the business management and business functions of U.S. companies.” The Petitioner further asserts that her proposed endeavor is a “vital aspect of U.S. companies’ operations and sales, which contributes to a revenue-enhanced business ecosystem and an enriched, productivity-centered economy.” The Petitioner also asserts that her proposed endeavor will also “contribute to tax revenue and ultimately help increase the flow of money in the United States on a national level, which will contribute to an enhanced U.S. gross domestic product.” The Petitioner states that she intends to “continue implementing resourceful sales strategies, designing marketing plans, maintaining positive relationships with professional colleagues, and identifying any opportunities for business development through extensive research.” While the Petitioner claims that her professional activities will generate revenue growth and increased productivity for U.S. companies, she did not provide specific plans, detailed projects, or other sufficient evidence to explain how her sales strategies, marketing plans, business relationships, and more business opportunities will have broader implications in the fields of sales and international law that rise to the level of national importance or that these practices would impact the fields beyond the company and its clients.

The Petitioner’s initial proposal to work with companies as a sales manager in the field of business to provide sales consultancy services was not supported by sufficient evidence of its national importance under the first prong of the *Dhanasar* analytical framework. In addition, the evidence submitted in support of the new endeavor to form a trading company in the fields of sales and international law and manage that company as its CEO still does not sufficiently establish its national importance. The record does not sufficiently indicate how providing broker services, sales consulting services, and market analysis to the company’s customers will translate into broader implications in the fields of sales and international law. Accordingly, we conclude that the Petitioner has not established that she has satisfied the first prong of the *Dhanasar* framework.

On appeal, the Petitioner asserts that she meets the second and third *Dhanasar* prongs; however, since the identified basis for denial is dispositive of the Petitioner’s appeal, we will reserve these issues.³

III. CONCLUSION

³ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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 alternate issues on appeal where an applicant is otherwise ineligible).

As the Petitioner has not established by a preponderance of the evidence her eligibility under the first prong of the *Dhanasar* framework, she is not eligible for and otherwise merits a national interest waiver.

ORDER: The appeal is dismissed.