



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

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

In Re: 28432321

Date: SEPT. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business administrator, seeks classification as a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* 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.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies for the underlying EB-2 classification, but that the record did not establish that the Petitioner qualifies for the national interest waiver. 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 qualify for a national interest waiver, a petitioner must first show eligibility 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 EB-2 eligibility, 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 USCIS may, as matter of discretion,<sup>1</sup> grant a national interest waiver if the petitioner demonstrates that:

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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 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

The Petitioner earned a bachelor’s degree in business administration in Brazil in 2008. In 2001, she began working at an English-language school in Brazil, first as an administrative assistant, then as an assistant director and, finally, business manager. She worked at the school until she entered the United States in 2019 as a B-2 nonimmigrant visitor, later changing status to that of the F-2 spouse of an F-1 nonimmigrant student.

The Director determined that the Petitioner qualifies as a member of the professions with post-baccalaureate experience equivalent to an advanced degree. The issue before us is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

### A. Proposed Endeavor

In order to discuss whether the Petitioner’s proposed endeavor meets the three *Dhanasar* prongs, we must first know details about the proposed endeavor. The Petitioner initially stated that “proposed endeavor [is] to work as a business manager” and “a business administration professional,” but she provided no further details about her intended work in the United States.

In response to the Director’s RFE, the Petitioner cited a USCIS press release<sup>2</sup> which announced “updated guidance” relating to “the unique considerations for . . . entrepreneurs” seeking national interest waivers. The Petitioner submitted a 70-page business plan, indicating that she sought to create a “Consultancy, Assistance and Training Office in Corporate Administrative Management” to serve “educational institutions and small business” by providing services in “Competence Mapping,” “Identification of skills gaps,” “Expatriation process,” “Recruitment and selection,” “Payroll management,” “Corporate Governance,” and “Service and Operations Management.”

The Director issued a NOID, stating that the Petitioner had changed her proposed endeavor. The Director stated:

Instead of providing additional information explaining why her proposed endeavor as a Manager is of national importance, she introduced a new endeavor as an entrepreneur. . . . The beneficiary did not [initially] indicate . . . her entrepreneurial intentions. Only in response to the RFE did she provide a Business Plan and indicate her intentions to open her own company.

In response to the NOID, the Petitioner asserted that she had clarified, not changed, her proposed endeavor.

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<sup>2</sup> <https://www.uscis.gov/newsroom/alerts/uscis-updates-guidance-on-national-interest-waivers>.

In the denial notice, the Director stated: “Instead of providing more details about the proposed endeavor in response to the RFE and NOID, the beneficiary responded by significantly changing the endeavor. . . . The beneficiary’s establishment of a new company formed after the filing date cannot retroactively establish eligibility.”

On appeal, the Petitioner maintains that the information in the business plan is consistent with her initial claim that she would “work as a business manager.”

We agree with the Director that a petitioner must meet all eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). The establishment of a new company after the filing date is not necessarily a material change to the proposed endeavor if the initial description of the proposed endeavor indicates plans to establish such a company. But in this case, the Petitioner’s initial description of the proposed endeavor did not include or imply such plans.

The Petitioner maintains that she did not change her proposed endeavor, but rather had elaborated upon it. But her claims about how the proposed endeavor satisfied the *Dhanasar* requirements changed significantly after the Director issued the RFE. The Petitioner’s argument that she was merely providing more details about fundamentally the same proposed endeavor does not account for the substantial changes to the Petitioner’s claims under the various elements of the *Dhanasar* framework.

In her initial submission, the Petitioner had not relied on any arguments regarding entrepreneurship. After receiving the RFE, however, the Petitioner has centered her claims around policy guidance concerning entrepreneurs, along with job creation and other economic benefits that the Petitioner claimed would arise from her work as a management consultant. At the time of filing, the Petitioner cited her years of experience as a manager at the English school in Brazil. She has not claimed any experience as an entrepreneur or as a management consultant working with outside clients.

As discussed below, the Petitioner’s more detailed assertions in support of the national interest waiver claim derive from the revised version of her proposed endeavor, rather than the endeavor described when she first filed the petition.

## B. National Importance

The first *Dhanasar* 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.

Regarding the first *Dhanasar* prong, the Director concluded that the Petitioner had established the substantial merit of the proposed endeavor, but not its national importance. The Petitioner initially stated that her proposed endeavor would have national importance because:

Organizations . . . depend on new management systems and a new body of professionals capable of keep[ing] them in conditions of constant growth and update [sic] to stay in

the market. Those who are able to handle management skill better can [make] a difference in the corporate environment, taking their companies to the top of the success lists. Therefore, as a **business administration professional**, I am an expert in leading people towards defined goals, in managing projects, I am an expert in the financial management of the business, international trade, customer service, in creating means for innovative solutions within the company, and also in keeping the focus on environmental sustainability. These are aspects of impact on the management of companies and on the economy of a country.

In the same initial statement, the Petitioner addressed the claimed national importance of “Project Management,” “Financial Management,” “Customer Service,” “Sustainability,” “Leadership and Management People,” and “Foreign Trade.” She did not provide any specific details about how her proposed endeavor would address these areas. Instead, her statement essentially amounted to background information about them.

The Petitioner did not initially state that she would be an entrepreneur, hire employees, or provide consulting services to clients. Rather, she indicated that she would serve the national interest “[a]s an administrator,” and discussed ways in which her work would help her unspecified employer.

In response to the RFE and afterwards, the Petitioner cited previously unclaimed factors:

- Her “knowledge of the Brazilian market”;
- Creation of “up to 8 direct jobs” within five years, and between 22 and 67 indirect jobs, depending on how the indirect job creation is calculated;
- Participation in “a robust production chain”;
- Providing “the local community [with] access to quality information about the financial market at affordable prices”; and
- Tax revenues from her company’s economic activities.

The Petitioner also stated that her business would “invest part of [its] revenue to carry out cultural and social actions with the local community . . . as described below.” The discussion that followed, however, did not concern “cultural and social actions.” Rather, there followed two pages of discussion about how the Petitioner planned to promote her business.

Much of the Petitioner’s statement and business plan appears to consist of general statements about various beneficial concepts, sometimes with little or no explanation of their relevance to the proposed endeavor. For instance, as noted above, the Petitioner stated that she intends to provide “quality information about the financial market at affordable prices,” but she did not explain how this is relevant to her intended work in management consulting. The Petitioner did not indicate that her company would participate in “the financial market,” and she stated that her prospective clientele would consist of “educational institutions and small business[es],” rather than financial service providers.

Also of questionable relevance, the Petitioner’s list of “[s]ustainable practices proposed by the enterprise” includes an apparent reference to pharmaceutical products: “Follow the manufacturer’s

instructions regarding conditions of use, dosage, refilling, optimal response times, expiration dates, etc.” The Petitioner did not explain how this passage relates to her proposed endeavor.

The business plan also includes the assertion that there is a need for “immigration reform,” but the plan does not explain how the Petitioner’s proposed endeavor would bring about that reform.

The Petitioner stated that her “proposed endeavor has national or even global implications within a particular field (General and Operations Manager, for a Consulting, Advisory and Training Company in Business Administration Management) and impacts a matter that a government entity has described as having national importance or is the subject of national initiatives.” The Petitioner did not elaborate as to the national or global implications of her proposed endeavor. The overall significance of the entire field of management consulting does not establish the national importance of one particular management consulting firm.

As noted above, the Petitioner has noted that USCIS announced “updated guidance” relating to “the unique considerations for . . . entrepreneurs” seeking national interest waivers.<sup>3</sup> The Petitioner did not discuss details of this policy guidance and explain how it is relevant to her petition; she simply noted that policy guidance exists with respect to entrepreneurs who seek national interest waivers.

The policy guidance does not create a presumption of eligibility for entrepreneurs. Such individuals still bear the burden of proof to establish that they meet each of the *Dhanasar* prongs. For instance, a stated intention to create jobs in an economically depressed area does not invariably establish national importance. Rather, *Dhanasar* calls for job creation at a level that produces “substantial positive economic effects.” *Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner has not shown that her proposed endeavor would yield that level of job creation.

In the denial notice, the Director stated that the Petitioner “has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance.” Regarding the Petitioner’s job creation claims, the Director determined that the Petitioner had not shown that the proposed endeavor “has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation.” Regarding the Petitioner’s reliance on job multipliers to estimate indirect job creation, the Director stated that speculating about jobs created outside the Petitioner’s company did not establish that the proposed endeavor itself “has significant potential to employ U.S. workers.” The Director concluded that “the record does not show that the beneficiary’s proposed endeavor stands to sufficiently extend beyond her future employer and its clientele to impact her field more broadly at a level commensurate with national importance.”

On appeal, the Petitioner essentially repeats claims from her prior statements and the business plan for her proposed endeavor. She does not address, and therefore has not overcome, the Director’s concerns and conclusions about those earlier claims.

The Petitioner’s initial iteration of her proposed endeavor relied on general assertions about management, and did not establish the national importance of her proposed endeavor in particular. Her subsequent statements included more detail but described a substantially different proposed

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<sup>3</sup> This guidance was implemented in the *USCIS Policy Manual*, which includes “Specific Evidentiary Considerations for Entrepreneurs.” See generally 6 *USCIS Policy Manual* F.6(D)(4), <https://www.uscis.gov/policy-manual>.

endeavor, and relied on almost entirely different arguments regarding its claimed national importance. The Petitioner has cited information about the overall importance of small businesses, job creation, and management training, but she has not shown that, or explained how, her specific proposed endeavor would have national importance within those contexts.

For the reasons explained above, we agree with the Director that the Petitioner has not established the national importance of her proposed endeavor.

Detailed discussion of the remaining *Dhanasar* prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the other prongs.<sup>4</sup>

### III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

**ORDER:** The appeal is dismissed.

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<sup>4</sup> 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 alternative issues on appeal where an applicant is otherwise ineligible).