



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

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

In Re: 30043880

Date: MAR. 19, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an attorney, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, 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 record did not establish that the Petitioner merited a national interest waiver as a matter of discretion. 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 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 United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 discretion¹, 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

The Petitioner initially indicated that her proposed endeavor was to work as a legal consultant in the United States, “helping multinational U.S. companies, especially those companies moving into the Brazilian market.” She stated that she would assist such companies in working in “the complex business environment and avoid unnecessary fines and fees arising out of non-compliance with the complex business, trade, and labor regulations.” In response to the Director’s request for evidence (RFE), the Petitioner submitted a business plan for a company she and her spouse established in Florida, [REDACTED] one month after receiving the RFE. The business plan indicates that in addition to helping U.S. companies establish businesses in Brazil and Latin America, the company will also work with Brazilian companies seeking to business in the U.S. The plan also states that the company will provide legal consulting services such as the development of business plans, business analysis, and providing advice in a wide range of areas including tax, investments, insurance, retirement planning, labor, securities, and compliance with an undefined set of laws.

In his decision, the Director states that “the evidence suggests that you have no endeavor,” and goes on to note on more than one occasion that the Petitioner has not submitted evidence of her proposed employment with an employer in the United States. While we agree with the Director that the business plan for [REDACTED] is lacking in several ways, some of which we will discuss below, the Petitioner has consistently stated her intention to work as a legal consultant, and she has provided sufficient detail about her proposed endeavor to form a basis for evaluation under the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance

The first prong of the *Dhanasar* analytical framework, concerning the substantial merit and national importance of the proposed endeavor, 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.

Despite the Director’s statements noted above, he concludes in his decision that the Petitioner has submitted both a detailed description of her proposed endeavor and documentation of its substantial

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

merit. Based on the evidence of record, we agree that the Petitioner’s proposed endeavor has substantial merit in the area of business.

Turning to the national importance of the Petitioner’s proposed endeavor, the Director concluded that she had not established that her business would have significant potential to employ U.S. workers, broadly impact the legal consulting field, or otherwise “have implications rising to the level of national importance.” On appeal, the Petitioner begins by referring to some of the same statistics and information she included in her RFE response regarding trade between the United States and Brazil. She then asserts that her proposed endeavor will help the United States to expand its economic relationship with Brazil, stating that through her endeavor she is “removing barriers to trade” and expediting negotiations between enterprises in the two countries. The Petitioner adds that through these negotiations, her endeavor will have “a broader, positive impact on the economic and trade relationships between the U.S. and Brazil.”

As stated at the beginning of this section, the first prong of the *Dhanasar* analytical framework focuses on the specific endeavor that a petitioner proposes to undertake, as opposed to the work of the entire industry or field in which they propose to engage. Here, as a legal consultant, the Petitioner proposes to work with individual small- or medium-sized business by providing a variety of consulting services. It is apparent that her proposed endeavor could potentially have a positive impact on those clients. But she has not explained how this proposed work would have the broader implications for international trade that she claims, beyond the scope of the clients she would serve.

In the *Dhanasar* precedent decision, we specifically sought to avoid overemphasis on the geographic breadth of a proposed endeavor, noting that endeavors with “significant potential to employ U.S. workers” or those having “substantial positive economic effects, particularly in an economically depressed area” may have national importance. *Id.* at 890. Here, the Petitioner’s business plan includes an organizational chart showing herself as “Legal and Business Management Consultant (CEO)” overseeing a junior consultant and an administrative assistant. But the plan does not include a detailed description of the duties of these positions, or justifications for the need to employ two or more employees. It is therefore insufficient to show a significant potential to employ workers.

The business plan for [redacted] also includes financial projections showing net revenues ranging from less than \$500,000 in its first year of operation to over \$1 million in its fifth year. But the plan does not provide any basis for these projections, as it does not show the source of this revenue. Notably, in describing the company’s pricing strategy, the plan states only that “each product and service is priced accordingly” and then lists significantly lower figures for revenue than shown elsewhere.² Therefore, the business plan does not sufficiently show that the activities of [redacted] would potentially have significant positive economic effects.

In addition to her business plan, the Petitioner also submits with her appeal brief letters that she previously provide when responding to the Director’s RFE. The first of these relates to her experience

² We also note that in its “Costs and Expenses” section, the plan states that the cost of rent is based upon rents in Houston, Texas, despite the location of the business in Florida. The inconsistent figures included in the business plan for [redacted] further diminish the evidentiary value of this document. In any further proceedings in this matter, the Petitioner must resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

working as a legal advisor at the [REDACTED], and is complimentary of her performance in this role. But this information is relevant to her record of success in previous activities related to her proposed endeavor, a factor that is considered when evaluating whether an individual is well positioned to advance their proposed endeavor under the second prong of the *Dhanasar* analytical framework. Likewise, another letter, from the CEO of a [REDACTED] dealership group in Brazil, indicates that the company is interested in retaining the Petitioner's services for help in expanding their business to the United States. This letter pertains to a different second prong factor, the interest of potential customers or other relevant entities in the proposed endeavor. Neither of these letters support the national importance of the Petitioner's proposed endeavor.

Also submitted on appeal is a new letter from the owner of a company involved in marketing and business consultancy and information technology. But where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). Here, the Director's RFE advised the Petitioner of the deficiencies in the record, and she responded with additional evidence. We will therefore not consider this additional evidence.

In her brief, the Petitioner summarizes her assertions under the first prong of the *Dhanasar* analytical framework by stating that "the economic and trade relationship between the U.S. and Brazil is of national importance to the U.S." While that may be the case, the Petitioner has not shown that her specific proposed endeavor will have the broader implications in this area that are required to establish its national importance. Accordingly, she has not established that she meets the first prong of the *Dhanasar* analytical framework.

III. CONCLUSION

A petitioner must meet all three prongs of the *Dhanasar* analytical framework in order to establish their eligibility for a national interest waiver. Since the identified basis for denial, the Petitioner's inability to meet the first prong of the framework, is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the second and third prongs of the framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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). In addition, we reserve the issue of whether the Petitioner is eligible for the underlying EB-2 immigrant visa classification as either a member of the professions holding an advanced degree or an individual of exceptional ability.

ORDER: The appeal is dismissed.