



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

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

In Re: 27693833

Date: MAY 6, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an architect, 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 did not establish that a waiver of the classification's job offer requirement, and thus of the 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 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.*

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

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.

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,² 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 Director determined that the Petitioner is a member of the professions holding an advanced degree.³ 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 more than 10 years of experience as an architect and urban planner, working “in various stages of the architectural process, in projects and interior design, studies of building plans, presentations of solutions for residential and corporate areas.” The Petitioner’s proposed endeavor is to provide consulting services as an architect in her own firm, including architectural work and interior design. She states that her proposed endeavor will benefit the United States by:

- Implementing sustainable architecture solutions.
- Creating economically and energy-efficient architectural properties.
- Driving the growth of green building projects in the United States.
- Improving project control to avoid waste of materials, structure problems, and rework.
- Creating healthier living and working environments.
- Reducing operating costs and increasing profits.
- Creating jobs and increasing income to improve the economy.
- Strengthening the supplier and raw material chain.
- Increasing quality and safety in infrastructure.
- Improving socio-economic development of economically depressed communities.

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

² See also *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 to be discretionary in nature).

³ The record demonstrates that the Petitioner holds the foreign equivalent of a U.S. bachelor’s degree awarded in 2015, followed by more than five years of progressive experience. See 8 C.F.R. § 204.5(k)(3)(i)(B).

whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

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, a detailed business plan, and several articles discussing the importance of architecture and urban development to the United States. The letters and articles support the Director's determination that the Petitioner's proposed endeavor, aimed at increasing green and sustainable building solutions, 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, the Director noted that the record did not include a plan describing how the Petitioner intended to pursue her business in the United States. He further noted that, although the letters of recommendation established her past work history, the Petitioner did not submit independent, objective evidence of her contributions to the field as a whole.

The Petitioner's response to the RFE includes a detailed business plan, additional letters of recommendation, and a personal statement. In her business plan, the Petitioner includes a summary of her business strategy, as well as a personnel plan and financial projections for a five-year period. She predicts hiring 15 full-time employees, in addition to herself as Chief Architect and Designer, to work in two office locations in Florida. Her financial projections include net profit of \$202,593, and total revenue of \$1.8 million within five years.

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 stated that the Petitioner's recommendation letters give her general praise for the work she has accomplished, but do not establish that she has a record of success in the endeavor. He again noted that the Petitioner did not submit independent, objective evidence to demonstrate that she has made contributions to the field as a whole.

On appeal, the Petitioner asserts that she has demonstrated experience, knowledge, and progress toward achieving her proposed endeavor. She cites to evidence already in the record and asserts that this evidence establishes that she is well-positioned to advance her proposed endeavor.

To support her claimed record of success in the field, the Petitioner relies on two letters of recommendation, one from her current employer and one from a former colleague, 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.⁴ For example, [REDACTED] the Petitioner's current employer, describes the Petitioner as an "asset to the company," and states that she "implemented new standards that increase sales." While these accomplishments may benefit the Petitioner's employer and its clients, Ms. [REDACTED] does not describe the Petitioner's contributions to the field of architecture and design. [REDACTED] the Petitioner's former colleague, describes the Petitioner's knowledge in different architectural techniques, but does not provide specific examples of the Petitioner's contributions to the field of architecture or discuss how the Petitioner has been recognized for her work.

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 former colleague [REDACTED] describes the Petitioner's "rise in the *regional* market, "noting that her works have gained prominence among the community of *local* architects." Emphasis added. Mr. [REDACTED] does not name or describe any of the Petitioner's projects, nor does he explain how the Petitioner's regional and local accomplishments have impacted the field of architecture and design.

The Director noted, in the RFE and in the decision, that the Petitioner did not submit evidence of any contracts, licenses, or agreements demonstrating that she has made progress toward advancing her endeavor in the United States. On appeal, the Petitioner states that her business plan describes her progress toward achieving her proposed endeavor. Although the business plan discusses the Petitioner's "organization and personnel plans" and "marketing and promotion," it does not describe the Petitioner's plans for obtaining a license to practice her profession in Florida, the proposed location for her business. Nor does the record include evidence that the Petitioner has taken steps to register her business, [REDACTED] or identify specific locations for its operations in [REDACTED] and [REDACTED] Florida.

The Petitioner states that her business will "execute a whole range of architectural and design services for new residential and commercial projects, as well as for public sphere and urban planning projects and renovations." The Petitioner does not mention, in either her personal statement or her business plan, what steps she has taken toward working with residential or commercial clients, key aspects of her proposed endeavor. The business plan does not discuss the Petitioner's planned involvement with urban planning projects, as she describes in her proposed endeavor. The record lacks evidence of interest from public administration or agencies involved in urban planning, 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 in architecture and design, but she has not shown that this work renders her well-positioned to advance her specific proposed endeavor as an architect and design consultant. 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,

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

however, has not sufficiently demonstrated that her work has served as an impetus for progress in the field of architecture and design. Nor does the evidence otherwise show that her work constitutes a record of success or progress in increasing green and sustainable building solutions.

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.