



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

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

In Re: 22603555

Date: OCT. 14, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a police sheriff, seeks second preference 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 EB-2 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 qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition to the definition of “advanced degree” provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.”

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates: (1) that

¹ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's 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.

The third prong requires the 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, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.²

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

We withdraw the Director's determination that the Petitioner qualifies as a member of the professions holding an advanced degree. To qualify as a member of the professions, an individual must meet "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. 204.5(k)(2).³

The Petitioner has not demonstrated that her current position, police sheriff, or proposed alternative occupation, security consultant, qualifies as a member of the professions. Neither position is one of the occupations listed in section 101(a)(32) of the Act and the Petitioner has not shown that a United States

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ Section 101(a)(32) of the Act states "[t]he term 'profession' shall include but not limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

baccalaureate degree or its foreign equivalent is the minimum requirement for entry in those occupations.⁴ Accordingly, the Petitioner has not established that she qualifies as a member of the professions holding an advanced degree.

B. National Interest Waiver

The remaining issue to be determined 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner initially indicated that she plans to "join the ranks of one of the 18,000 U.S. police departments and to continue my police career by applying to the selection processes of the agencies which admit foreigners." She further stated that she intended to "also consider, as an alternative career," providing security "consulting services to government agencies and private companies in the prevention area, also in the identification and combating money laundering."

The Director issued a request for evidence (RFE) asking the Petitioner to provide further information and evidence regarding her proposed endeavor in the United States. In response, the Petitioner asserted that her undertaking involves establishing a company "in the Private Security area" that is "focused on corporate intelligence and private investigations." She further stated:

[T]he company I intend to open . . . will provide corporate intelligence and private security services for both private and corporate clients and its focus will be on providing services as anti-bribery and corruption (ABC) investigations and compliance, anti-money laundering and combating the financing of terrorism (CFT), sanctions, and fraud compliance programs, art risk advisory, asset tracking and recovery, dispute advisory services, due diligence, financial investigations and forensic accounting, fraud detection analytics, fraud investigations, intellectual property and counterfeiting investigations, internal investigations, investment due to diligence, litigation support, physical and cyber risk management, private client services, reputational defense, and shooting prevention and early intervention program in schools.

The Petitioner's RFE response contains a December 2021 business plan for her proposed corporate intelligence and private security services company that she intends to establish in [redacted] Texas. Her business plan contends that her company's proposed services are "focused on preventing money laundering, tax evasion, and general financial losses to both clients and the U.S. economy as a whole." This business plan includes industry and market analyses, information about her company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing,

⁴ For example, the U.S. Department of Labor's *Occupational Outlook Handbook* states: "Police and detective applicants must have at least a high school diploma or equivalent, although some federal agencies and police departments may require that applicants have completed college coursework or a college degree." See <https://www.bls.gov/ooh/protective-service/police-and-detectives.htm#tab-4>, accessed on October 12, 2022.

the Petitioner's business plan anticipates that her company will employ eight personnel in year one, nine in year two, ten in year three, eleven in year four, and twelve in year five, but she did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, while her plan offers sales projections of \$546,000 in year one, \$650,000 in year two, \$754,000 in year three, \$868,400 in year four, and \$977,600 in year five, she did not adequately explain how these sales forecasts were calculated.

The record includes information about the "Police and Detectives" occupational category, ways to improve police recruitment and retention practices, high attrition in law enforcement, the benefits of law enforcement-private security partnerships, and promotion and enforcement of intellectual property rights in Brazil. In addition, the Petitioner provided articles discussing the challenge of recruiting new police officers, consideration of non-citizen candidates as a solution for improving police recruitment, and executive orders aimed at fighting drug trafficking and criminal networks. She also submitted an "Executive Order on Safe Policing for Safe Communities," an "Executive Order on Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade," a U.S. Congressional bill for establishing "the Cybersecurity and Infrastructure Security Agency of the Department of Homeland security," and a U.S. Congressional resolution "[a]cknowledging that the lack of sunlight and transparency in financial transactions and corporate formation poses a threat to our national security and our economy's security." The record therefore supports the Director's determination that the Petitioner's proposed work has substantial merit.

In the decision denying the petition, the Director determined that the Petitioner had not demonstrated the national importance of her proposed endeavor. The Director stated that the Petitioner's business plan "does not explain how her single, individual business would have a broad effect on financial crimes concerning the U.S. economy as a whole, nor how it would address these matters on a broad scale. The plan does not state how the business would have a broad prospective effect on its field, rather than to the individual clients which choose to hire its services." The Director also indicated that "the record does not contain any evidence demonstrating that the U.S. Federal Government has an interest in the Petitioner's consultancy business, nor does it explain how this business would assist law enforcement agencies, gather intelligence, or perform any task related to the prevention of crimes which are defined by federal, state, or local law without specific authority granted by those levels of government." The Director concluded that the Petitioner had not shown that her proposed "consultancy business would hold national importance, or that it would have significant prospective effect on the field of financial crimes that were raised in the documentation provided."

In her appeal brief, the Petitioner points to the "recruitment crisis facing U.S. police departments" and contends that there is "a shortage of public security professionals." The Petitioner, however, has not established that her proposed endeavor stands to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner also argues that her proposed endeavor aimed at "corporate intelligence services and private security" stands "to contribute to the economy and collaborate with the public security of the United States." She indicates that her "business plan details the contributions of my future company and the benefits it will bring to the nation, including 'significant potential to employ U.S. workers' and 'other substantial positive economic effects,' as well as the intention to favor the hiring of veterans and former

police officers, taking advantage of the experience and training of these professionals in the area of security and defense, helping their reintegration into the job market.”

The Petitioner’s appellate submission includes a February 2022 letter from [redacted] owner of the [redacted] which offers training courses relating to “the safe and responsible use of firearms.” [redacted] asserts that the Petitioner’s “business design is unique and personalized and can effectively contribute to the safety and well-being of U.S. citizens as well as help other companies mitigate risks in their operations in many ways.” He also states: “Business, investment, contracting, or whatever else can know exactly where they are stepping into, because [the Petitioner’s] company strategy beforehand by avoiding damages due to a scam, fraud or contact with resources of dubious origin.” [redacted] further indicates: “Other services of indisputable importance will be provided by [the Petitioner’s] company, such as anti-money laundering and combating the financing of terrorism, physical, cyber risk management, prevention and early intervention program in schools, whose benefits go beyond their customers.”

In determining national importance, the relevant question is not the importance of the field, 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 *Dhanasar*, we further noted 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.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. While the Petitioner’s statements and business plan reflect her intention to provide corporate intelligence and private security services for her proposed company’s future clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s undertaking stands to sufficiently extend beyond her proposed company and its future clientele to impact the corporate intelligence field, the private security industry, U.S. law enforcement initiatives, or the U.S. economy more broadly at a level commensurate with national importance.

With regard to the Petitioner’s assertions that she intends to become a police officer or to provide shooting prevention and early intervention programs in schools, the record does not show that her proposed work offers broader implications for her field, as opposed to being limited to the police department for which she serves or to those students who participate in her company’s school program sessions. While the Petitioner’s plans to provide policing, school safety, and youth intervention services have merit, the record does not demonstrate that these activities offer benefits that extend beyond her future police department, or the schools that opt to participate in her proposed company’s programs, to impact public safety more broadly. Likewise, in *Dhanasar*, we determined that the

petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not shown that her proposed company's future staffing levels and business activity stand to provide substantial economic benefits in Texas or the United States. While the sales forecast for the Petitioner's company indicates that her company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her "company will create 12 jobs in five years," she has not offered sufficient evidence that the area where her company will operate is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established that she qualifies as a member of the professions holding an advanced degree. In addition, as the Petitioner has not met the requisite first prong of 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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.