



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

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

In Re: 30629606

Date: JUN. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a cosmetologist, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability. *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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 record did not establish that the Petitioner qualifies for the underlying EB-2 qualification or for a 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 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)–(F).<sup>1</sup> Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.<sup>2</sup> If

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<sup>1</sup> If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

<sup>2</sup> USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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 USCIS may, as matter of discretion<sup>3</sup>, 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.<sup>4</sup>

## II. EB-2 CLASSIFICATION

The Director determined that the Petitioner met the following four of the six categories of evidence required to demonstrate exceptional ability:

- An official academic record showing that the individual has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A);
- Evidence in the form of letter(s) from current or former employer(s) showing that the individual has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B);
- A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C); and
- Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Director concluded, however, that the Petitioner did not demonstrate that she had a degree of expertise significantly above that ordinarily encountered in the field and, therefore, that she did not establish that she was an individual of exceptional ability as necessary to qualify for the EB-2 classification.

On appeal, the Petitioner submits a brief and supporting documentation. The Petitioner states that the Director’s decision “contains numerous erroneous conclusions of both law and fact,” asserting that the Petitioner qualifies under the remaining two evidentiary categories of evidence to establish exceptional ability and, as a result, has a degree of expertise significantly above that ordinarily encountered in the field. In her final merits analysis, the Director determined that the Petitioner did not establish that her qualifications to work in the field of cosmetology distinguished her from others in the field. Since the record does not establish by a preponderance of the evidence that the Petitioner is eligible for or

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<sup>3</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).

<sup>4</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

otherwise merits a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification as an individual of exceptional ability.<sup>5</sup>

### III. NATIONAL INTEREST WAIVER

The remaining issue to be determined on appeal is whether the Petitioner 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.

The Petitioner initially stated that she intended to operate a chain of hair salons in Florida offering hair and nail products and services. She also intended to provide workshops to train "individuals willing to start working in the beauty sector, professionals in this sector interested in perfecting their skills, or professionals that want to launch their own businesses." The Petitioner further stated that her company would "offer business coaching to salon owners, thus helping them improve the performance of their businesses, expand, and create more jobs." The Director concluded that, while the Petitioner's proposed endeavor had substantial merit, she did not demonstrate that her proposed endeavor had 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 whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

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 *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. Further, 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. 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.

On appeal, the Petitioner asserts that the submitted evidence establishes the national importance of her endeavor, stating the following:

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<sup>5</sup> 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).

[The Petitioner's] proposed endeavor to establish a chain of hair salons and offer comprehensive beauty training has the potential to bring about national implications within the beauty industry. Her qualifications and professional history highlight her exceptional expertise and dedication to the field, making her a formidable force in driving positive change and elevating industry standards.

...

By encouraging business growth and removing barriers to legal immigration, her consulting services can foster a more inclusive, diverse, and innovative environment in the regions she operates in. This approach can lead to the development of new ideas, products, and services, driving overall economic growth and prosperity.

Another one of the economic impacts of [the Petitioner's] endeavor lies in its job creation potential. As she expands her chain of salons and education centers across the nation, there will be an increased demand for skilled professionals in the cosmetology industry. Hairstylists, makeup artists, beauty educators, and salon staff will be employed, reducing unemployment rates and improving the standard of living for numerous individuals and their families. The growth in employment opportunities will not only positively impact local economies but also stimulate consumer spending, leading to broader economic prosperity.

...

As her chain of salons and education centers expands, the positive economic effects will cascade through the entire supply chain. The increased demand for beauty products and services will benefit suppliers, manufacturers, and distributors, further boosting economic activity and creating additional opportunities.

The Petitioner's business plan includes the following:

Through her proposed endeavor, [the Petitioner] will contribute to the mix of the competition in the hair salon market in Florida, support the development of e-commerce sales of beauty products, and contribute to the continuous education of beauty professionals. Additionally, through [her company's] activities, [the Petitioner] will support other beauty salon owners in successfully managing an expanding their businesses, ultimately contributing to the development of the overall economy.

These assertions of the Petitioner, as well as others in her business plan and elsewhere on the record, largely discuss the anticipated potential of her company based on her experience, hair and nail salon industry forecasts, and consumer data within the industry. However, these assertions are not supported by objective evidence to demonstrate how her company, one of many operating in the industry, would have a prospective national impact on the field or on an economy of any scale. For example, the business plan anticipates hiring 20 individuals, generating \$825,795 in payroll expenses, \$123,869 in payroll taxes, and a net profit of \$73,937, by the conclusion of its fifth year of operation. The plan does not, however, provide an objective basis for these projections, nor are the numbers corroborated

by probative evidence sufficient to demonstrate that it is likely the company will have a positive national economic impact or a national prospective impact within the field. A petitioner must support assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376.

The business plan also includes a Regional Input-Output Modeling Systems (RIMS II) analysis to demonstrate the company's potential impact on the region in which it intended to operate. It states that the multipliers for the category of Personal Care Services Industry in Florida project "a final-demand impact in employment, equivalent to 702.918 jobs in Year 5" and revenues of \$1,810,378. The Petitioner has not sufficiently demonstrated that RIMS II's broad category of "Personal Care Services in Florida" properly captures the potential impact of her proposed endeavor, which involves providing hair and nail products and services and workshops for individuals intending to enter the field. She has therefore not shown that these general statistics on a broad category of economic activities substantiate the national importance of her proposed endeavor. Moreover, the RIMS II modeling tool relies on various assumptions, including those made by the Petitioner, leaving the prospective impact of her proposed company uncertain. The Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor based on its potential job creation or impact on the U.S. economy.

The Petitioner initially provided industry reports and articles discussing immigration, entrepreneurship, the beauty industry, and the presidential administration's small business initiatives. While this material discusses certain topics related to the economy, it does not provide insight into the Petitioner's plan to operate a chain of salons or show how her specific endeavor would have a potential prospective national impact.

On appeal, the Petitioner references letters of recommendation and other material as evidence of her skills and experience. We note that evidence of an individual's abilities and history within a field generally relate not to the national importance of an endeavor, as discussed in the first prong of *Matter of Dhanasar*, but to the second,<sup>6</sup> discussing whether an individual is well positioned to advance an endeavor. As such, the letters of recommendation do not sufficiently demonstrate the national importance of the Petitioner's proposed endeavor.

The Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the nation. Specifically, she has not shown that her business stands to provide substantial economic benefits to any particular locality or to the United States overall. While the business plan and statements explain in general terms that her company would benefit the U.S. economy because it would help create jobs, that reasoning is not based on any objective evidence related to her specific proposed endeavor to operate a chain of salons offering educational workshops. As such, the business plan does not demonstrate that the prospective benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

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<sup>6</sup> Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision.

In addition, although the Petitioner claims that her company will positively benefit a low-income area, it is not clear how a business of the size and scope described in the business plan would positively impact a given region where her employees or clients are located. The Petitioner has not provided evidence to show that she would create jobs for a significant population of workers in a particular region, nor has she shown that her proposed endeavor would offer a region or its population substantial economic benefits through employment levels, business activity, or tax revenue.

On appeal, the Petitioner claims that her proposed endeavor “holds immense potential to broadly enhance societal welfare,” stating the following:

By actively recruiting hairstylists and makeup artists from different ethnicities and cultural backgrounds, she aims to create a more diverse and representative workforce. This approach leads to a broader range of beauty services that cater to diverse needs and preferences, thereby contributing to a thriving and dynamic beauty industry that reflects the rich diversity of her nation.

Although the Petitioner’s hiring choices would affect the diversity of the workforce within her salons, she does not explain how this would contribute to the industry in a manner that would have a national impact. The Petitioner asserts that her “endeavor contributes directly to the nation’s goals of promoting economic development, job creation, and skills training.” She also states, “By offering education and coaching services to salon owners, she empowers small businesses in the cosmetology sector, which is essential for growth and sustainability in the industry.” However, while her services may benefit individual clients, the Petitioner does not explain how training offered by a salon chain would benefit the beauty industry on a national scale.

The Petitioner further points to a purported talent shortage in the field of cosmetology and claims that training courses offered by her salons would address the issue, stating that they will “empower recently graduates cosmetology students, primarily women, with the confidence and updated skills necessary to enter the job market or start their businesses.” Likewise, she indicated that she would “train and uplift a large number of individuals, thereby contributing to a boost in the American beauty industry and workforce.” The Petitioner, however, does not support these claims with sufficient evidence to establish that her proposed endeavor stands to impact or significantly reduce this purported national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* 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).

### III. CONCLUSION

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

**ORDER:** The appeal is dismissed.