



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

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

In Re: 30215253

Date: MAY 2, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is a computer systems engineer who 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 (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that the Petitioner merits a discretionary waiver of the job offer requirement in the national interest. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 an NIW, 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.

Once a petitioner demonstrates eligibility for the 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 NIW petitions. *Dhanasar* states that USCIS may, as matter of discretion, grant an NIW 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.

The purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining four U.S. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny an NIW to be discretionary in nature).

II. ADVANCED DEGREE PROFESSIONAL

The Director determined the Petitioner met the requirements of an advanced degree professional. While we agree she possesses a bachelor's degree and claims she accumulated the requisite five years of post-bachelor's experience, the evidence she submitted to demonstrate the experience does not satisfy the regulatory requirements for such materials.

The regulation at 8 C.F.R. § 204.5(g) mandates that experience letters be from current or former employers while also including the name, address, title of the author, and a specific description of the duties the foreign national performed. If a petitioner can demonstrate this evidence is unavailable, USCIS will consider other documentation relating to their experience. Here, the Petitioner provided numerous letters from previous employers, but they lack a specific description of the duties she performed. Instead, the letters contain general information such as the job title or their appreciation for her services. Because the submitted evidence is not sufficient to meet the requirements relating to the Petitioner's experience, we withdraw the Director's favorable determination on this issue.

III. NATIONAL INTEREST WAIVER

The Petitioner's proposed endeavor is to serve as an individual consultant and to provide comprehensive information technology services to companies in the United States. She intends for this endeavor to support the profitability and productivity of those companies through the development, implementation, and ongoing maintenance of their entire information technology infrastructure.

A. Well Positioned to Advance the Proposed Endeavor

Dhanasar's second prong places its focus on the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: (1) their education, skills, knowledge and record of success in related or similar efforts; (2) a model or plan for future activities; (3) any progress towards achieving the proposed endeavor; and (4) the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The Petitioner claimed she possesses the skills and knowledge to advance the proposed endeavor and she relies on her experience, certifications, and her claims of a track record of success in support of her claims under this *Dhanasar* prong. Within the RFE response the Petitioner described much of what she plans on executing to aid her in meeting the second prong's requirements, such as her plans on consulting with U.S. companies in computer systems design, network management, and information technology support services.

The Director determined that, after consideration of the relevant factors, the evidence submitted did not establish that the Petitioner was well positioned to advance the proposed endeavor. The Director noted her academic and professional accomplishments are positive achievements, but they are only

one factor we will consider. The Director evaluated the submitted letters and determined the authors didn't provide examples of how she has influenced the field in line with their claims, they were only complementary, and they essentially reflected her influence was limited to adding to the general pool of knowledge in her field.

Also, the Director noted the Petitioner's work on projects, but found a lack of supporting evidence of her role to show she should receive credit for any project's success. And they noted a lack of interest from potential customers, users, investors, or other relevant entities or individuals to finally conclude the Petitioner did not establish she was well positioned to advance the proposed endeavor, and we ultimately agree with that conclusion.

We begin discussing the May 5, 2023 opinion letter from [redacted] a professor of computer science at [redacted]. Within the appeal, the Petitioner states the Director apparently failed to consider this evidence appropriately, and she claims Professor [redacted] details specific examples demonstrating she is well positioned to advance the proposed endeavor. However, the appeal brief does not offer those examples from Professor [redacted] other than indicating he recognized her role in designing and implementing computer systems for several companies and other accomplishments throughout her career. A review of the professor's prong two discussion under the *Dhanasar* framework reveals little to corroborate how the Petitioner characterizes the professor's letter in the appeal.

Professor [redacted] recounts the Petitioner's education, certifications, and work history. He also quotes extensively from the reference letters in the record without explaining their nexus to this prong's requirements, then offers the following conclusory statement regarding her eligibility:

Through her education and hands-on work experience, she has demonstrated that she is fully capable and well-positioned to advance the proposed endeavor due to her record of achievements and expertise in her field, in addition to the various leading and critical roles for the companies in which she has worked.

It is insufficient to allege eligibility through conclusory assertions that are not supported by sufficient evidence, which proves the allegation. *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Additionally, we may exercise our discretion and treat opinion statements the Petitioner submits as advisory and where that opinion falls short evidentiarily, we are not required to accept it, or we may give it less weight. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). We do not find Professor [redacted] opinion letter to be of sufficient value to support the Petitioner's claims under the second *Dhanasar* prong.

Next, the Petitioner states the Director touched on her education being only one factor, but they didn't provide adequate explanations of why the complimentary evidence was insufficient. The Petitioner notes the Director made no reference to certifications she has received, and they rejected the testimonial letters without specifically detailing their deficiencies. The Petitioner posits this is in direct contravention of the USCIS Policy Manual reflecting entrepreneurs may offer unique types of evidence to demonstrate eligibility such as "*Degrees, Certifications, Licenses, Letters of Experience.*" See generally 6 USCIS Policy Manual F.5.(D)(4), <https://www.uscis.gov/policymanual>. We agree this agency policy reflects entrepreneurs "may" submit this type of evidence, but what it doesn't provide

is the simple submission of those types of evidence will automatically result in a petitioner meeting their evidentiary burden under any of the *Dhanasar* prongs. The Petitioner still must explain how those submitted materials collectively demonstrate she is well positioned to advance the proposed endeavor.

Regarding the certifications, we acknowledge the Director did not include those as part of the discussion in the denial. But we also note that the Petitioner does not explain the role those certifications should play in her showing she is well positioned to move the endeavor forward. The Petitioner also contests the Director's treatment of the letters of testimonial support. Although the appeal brief reflects the Director gave short shrift to these letters and they offered little explanation other than they "lack specific, detailed information to show the petitioner is well positioned," again the Petitioner offers no argument to illustrate the manner in which the letters contribute to her meeting the second prong's requirements. While this might be a claimed error, the Petitioner did not support that claim by explaining why and how the letters move the needle in her favor to show she is well positioned to advance the endeavor. The Director cannot evaluate a claim the Petitioner does not make.

Other forms of evidence the Petitioner notes the Director did not directly evaluate consisted of her role as a judge of the work of others and authorship of published materials. The Petitioner states the Director should have provided adequate reasoning for rejecting those materials. However, it does not appear the Director rejected the materials and refused to consider them, but instead found them insufficient to support the Petitioner's assertions that she is well positioned to advance the endeavor. On the issue that the Director did not discuss these types of evidence, we might find them as errors that prejudiced the Petitioner if she explained how the failure to analyze them had some discernable effect on the outcome of the case. But it is not enough to demonstrate errors in an agency's decision, the Petitioner must also establish that they were prejudiced by the mistakes. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016); *Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

The Petitioner closes this prong of the appeal brief contesting the Director's determination regarding a lack of interest from potential customers, users, investors, or other related entities or individuals to demonstrate she is well positioned to advance the endeavor. The Petitioner equates this analysis from the Director to a requirement that she receive a job offer from a U.S. employer or any other interested party in the United States to help further her case. She then points to the personal plan she provided in the RFE response that she claims substantiates her future endeavors. As the Director didn't provide extensive analysis on the Petitioner's personal plan, we will offer it here.

This personal plan is less like a business plan than it is a summary of the Petitioner's work history and qualifications, general industry information justifying the need for the types of services she would like to provide, a brief explanation of her proposed endeavor, and her opinion of how that endeavor could have an impact at a national level. Regarding this last item, her consultancy services, as an individual computer systems engineer providing services to individual organizations, and the impact of those services at a national level is more related to the first prong in which we evaluate national importance of the proposed endeavor. Here, she must illustrate that she is in a favorable position to put her plan into action and this personal plan falls short of that effort.

This personal plan might be helpful in laying out some of the considerations for acting as a single information technology consultant, but it does not adequately aid the Petitioner in demonstrating she is well positioned to advance the proposed endeavor. While no particular type of evidence is specifically required, the Petitioner could, for example, have included information or evidence regarding how she will market her services; any aspects that differentiate her services from other computer systems engineering consultants; the pricing structure she will utilize and how that compares to similar competitor consultants; the funds needed to create and start the consulting business to include monthly fixed costs and equipment expenditures; the projected costs and earnings over a specific period of time; past successes in similar efforts, to include one company she claims she created in the United States; or other measurable progress related to the endeavor.

Finally, even though the Petitioner states in the appeal brief that it is not a requirement for her to show she has received a job offer from a U.S. employer or any other interested party in the United States to help further her case, it remains that one of the considerations under the second prong is whether she has garnered the interest of potential customers, users, investors, or other relevant entities or individuals. We note that she has not made such a showing within the appeal.

Collectively considering the Petitioner's claims under this prong, we conclude she has not demonstrated eligibility under this NIW requirement. The record does not reflect sufficient interest from potential customers, users, investors, or other relevant entities or individuals to demonstrate that the Petitioner is well positioned to advance her proposed consultancy business. Nor does the evidence show that her track record of running various businesses, plans for future activities, and progress towards establishing her new company in the United States rise to the level of rendering her well positioned to advance the proposed endeavor. For these reasons, the Petitioner has not established that she satisfies the second prong of the *Dhanasar* framework.

B. Additional *Dhanasar* Requirements

On appeal, the Petitioner asserts she meets additional eligibility requirements under the *Dhanasar* analytical framework, but she has not satisfied *Dhanasar's* necessary second prong. Because this shortcoming is dispositive of the appeal, we reserve our opinion regarding the remaining issues. Where a case warrants a denial regardless of other eligibility considerations, it is unnecessary that we address those other considerations. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.