



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 21898896

Date: AUG. 25, 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 medical scientist in the field of dentistry, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business, 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that 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. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center determined that the Petitioner qualifies for the underlying classification and that his proposed endeavor has substantial merit and national importance. Nevertheless, the Director denied the petition, concluding that the evidence did not establish that he is well positioned to advance the proposed endeavor or that a waiver of the requirement of a job offer would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner reasserts his eligibility, arguing that the Director did not review each piece of evidence properly and erred in the decision. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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, 8 USC § 1101(a)(32), 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.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

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, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

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). In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that 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. See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree.¹ The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

A. The Proposed Endeavor

The Petitioner stated on his Form I-140 that he intends to “conduct research dealing with the understanding of human diseases and the improvement of human health. Engage in clinical investigation.” In addition, the Petitioner described his proposed endeavor as engaging in clinical investigation, research, and developments or other related areas. He plans to continue his career by “work[ing] with American dental clinics that require his specialized knowledge, years of experience, and significant expertise. He intends to continue implementing ingenious strategies while maintaining positive relationships with professional colleagues and identifying any opportunities for business through extensive research.” The Petitioner also asserted that he will:

- “Conduct dental research to improve practices and develop new dental techniques;”
- “Advise dental professionals about cutting-edge research findings;”
- “Educate people on how to prevent oral diseases;”
- “Train newer generations of dental professionals;”
- “Promote clinics’ management, organization, and control of practices related to oral healthcare and ensuring quality services to improve client satisfaction;”
- “[B]e a source of technical and practical knowledge for students in dental school;”
- “[C]ontribute to the U.S. as a Medical Scientist in the Dental field;”
- “[C]ollaborate with international dentists in the United States to develop new dental techniques;”

¹ The evidence supports a finding that the Petitioner possesses the foreign equivalent of a master’s degree in dentistry with a specialization in endodontics. While the evidence does not establish that he is qualified to practice dentistry in the United States, it does establish that he meets the underlying EB-2 classification as an advanced degree professional.

- “[F]oster collaborative research between the top dental professionals [in Brazil] and in the U.S.,”
- “[H]elp U.S. dental institutions conduct collaborative research to improve practices and navigate dental markets” adding that “it is critical for U.S. dental institutions operating or planning to operate in Brazil to benefit from [his] expertise,” and
- “[W]ork as a Medical Scientist in the Dental field to help new and established dental institutions in the United States optimize their services by providing expert medical, technical, managerial, and organizational advice.”

The Director issued a request for evidence (RFE), which informed the Petitioner that the evidence did not establish that he is well positioned to advance his proposed endeavor nor did the evidence establish that it would be beneficial to the United States to waive the job offer and labor certification requirement. The Director did not request any evidence concerning the substantial merit or national importance of the proposed endeavor and the RFE contained no analysis or explicit statement that the Petitioner had met this element of the Dhanasar framework. In his RFE response, the Petitioner submitted evidence including, but not limited to, a professional plan and statement, a business plan, reference letters, and numerous articles concerning the importance of dentistry, the shortage of dentists, and the inequities of dental care.

Regarding his proposed endeavor, the Petitioner stated that he plans to continue his career in the United States in the dental field, specifically as a “Medical Scientist in the Field of Dentistry and Entrepreneur for his future company, [REDACTED] an oral healthcare institute and orthodontic clinic.” He intends to prioritize populations that have been affected by the nation-wide shortage of dental professionals in rural and underserved regions across the United States. In so doing, he will “work in the United States as a dental hygienist and through his future company” and provide services that involve determining “the type of treatments and techniques to use for dentists and patients.” His professional plan and statement included additional information on his proposed endeavor including:

Not only will I continue my positive and substantial contributions to the field through the dissemination and education of dental expertise to peers and aspiring practitioners throughout the nation, but I am also able to handle all the administrative and strategic decisions that come with the operation of a dental clinic. . . . [M]y overall proposed endeavor in the United States is to offer my expertise as a Dental Hygienist to help treat and care for patients. I will educate Americans on the importance of good dental care and dental practices. I will offer the United States high-quality technical services, including treatment options and other discoveries in the field. . . . I intend to continue working in the Dental industry as a Dental Hygienist and later on as a Dentist of my own clinic. . . . I will supplement my specialty in oral health care by educating Americans about the correlation between dental prevention and gingivitis risk.

In his business plan, he further stated that he will “work primarily on providing outpatients service in a clinic, which is going to be open in Illinois. It will provide adult endodontics treatments and implants, as well as consultations, cleanings, and orthodontics for patients of all ages.” After reviewing the Petitioner’s RFE response, the Director concluded that the evidence established that the proposed endeavor has substantial merit and national importance, but that it was insufficient to establish that the Petitioner is well positioned to advance his endeavor.

On appeal, the Petitioner argues that the Director applied a stricter and higher standard of proof, as well as erroneously applied the law without properly reviewing the evidence. Accompanying the Petitioner's brief on appeal is a business plan belonging to a different national interest waiver petitioner regarding a different proposed endeavor. As the Petitioner already provided his business plan in his RFE response, we examine it along with all the other evidence in the record in our de novo review. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

Upon review, we conclude that the Petitioner's proposed endeavor as described in his initial filing differs from the one described in response to the Director's RFE. Specifically, the Petitioner's initial filing emphasized researching as a medical scientist in the dental field and providing his dental expertise to students, dental professionals, and dental businesses. His proposed endeavor in response to the RFE changed the focus from research and consulting to providing dental hygiene services and opening his own dental practice. To illustrate, the Petitioner initially stated that his proposed endeavor involves "extensive research," while the proposed endeavor described in the RFE response includes an offer letter for employment as a dental hygienist with [REDACTED] a copy of the Petitioner's U.S. dental hygienist license, and a business plan involving the marketing of his own dental practice and the services he will provide through it. His proposed endeavor in the RFE response does not emphasize research, collaborating with other dental professionals and dental businesses, or facilitating U.S. business opportunities in the Brazilian dental market. Instead, the Petitioner shifted the emphasis of his proposed endeavor to providing dental and dental related services to underserved populations, in an effort to ameliorate the U.S. dentist shortage.

The purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), 103.2(b)(12), and Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See Matter of Izummi, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information the Petitioner provided in the response to the Director's RFEs did not clarify or provide more specificity to an initially described proposed endeavor, but rather it changed the focus of his work and his employment altogether. Accordingly, the RFE response presented a new set of facts regarding the work he will perform, which is material to eligibility for a national interest waiver. See Matter of Michelin Tire Corp., 17 I&N Dec. 248 (Reg'l Comm'r 1978); see also Dhanasar, 26 I&N Dec. at 889-90.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the Dhanasar analysis. Because the Petitioner has not provided consistent information regarding his proposed endeavor, we cannot conclude that he meets either the first or second prong, or that he has established eligibility for a national interest waiver.

B. Substantial Merit and National Importance

Even if we concluded that the change in the proposed endeavor was immaterial and did not shift the focus of the proposed endeavor, we would still conclude that the Petitioner has not established eligibility under the first prong of Dhanasar. In Dhanasar, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” Dhanasar, 26 I&N Dec. at 889. Here, the Petitioner’s endeavor involves numerous activities that may be summarized as assisting U.S. businesses that conduct dental related business in Brazil; advising dental clinics on administrative, organizational, and management practices; educating individuals on oral health; teaching dental professionals; providing assistance and advice to other dentists, students, and businesses; conducting research and engaging in clinical investigation; collaborating with others on research findings; offering services as a dental hygienist; and starting a dental practice. We can neither identify how much time the Petitioner will devote to each activity or if he performs each activity at once, nor can we determine the sequence of activities, if the Petitioner intends to perform them consecutively.

In addition, we conclude that the Petitioner has not established the national importance of his proposed endeavor. In Dhanasar, we 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 evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement by looking to evidence that documents the “potential prospective impact” of his work. To illustrate, “[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.

The Petitioner asserted that his proposed endeavor would address the nation’s dental crisis, improve Americans’ oral health, and fill a shortage of dental specialists in the United States. The Petitioner also claimed that his proposed endeavor will promote economic opportunities and create jobs for Americans, leading to an improved, productivity-based business market. In support, the Petitioner provided analysis of his eligibility for a national interest waiver from [REDACTED] a Director of the [REDACTED] Dental Hygiene Program. [REDACTED] provided an overview of basic supply and demand economics. She described how U.S. dental institutions would sell more medical products and render more services abroad, which would have “a positive multiplier effect in terms of additional jobs, income, and tax revenue associated with the creation of direct jobs in the United States.”² She further opined that when U.S. companies create direct jobs in the United States as a result of their increased commercial activities outside the United States, they pay salaries for employees, which generates business activity in other areas, such as with suppliers of construction equipment or services. [REDACTED] also stated that the indirect effects of additional jobs, wages, salaries, and business activity as a result of the increased commercial activities of U.S. companies conducting business outside of the United States would impact U.S. households through increased consumption and spending. While [REDACTED] may be well qualified in the dental hygiene field, her qualifications do not suggest she has expertise in economics. We are aware of the effects of supply and demand, along with basic

² [REDACTED] analysis relies upon a proposed endeavor that involves the Petitioner providing his assistance, advice, and research to U.S. health institutions as well as to businesses seeking to expand into new markets, such as Brazil. [REDACTED] opinion does not reflect a consideration of the Petitioner working as a dental hygienist or opening his own dental practice.

economics. However, the Petitioner must demonstrate a more direct connection between his proposed endeavor activities and the positive effects on the economy, job creation, and salary impacts he claims. Without sufficient details or corroborating evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's business would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.*

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the Petitioner has not established that [REDACTED] is qualified to offer her opinion regarding the economic impacts of the proposed endeavor. Moreover, her analysis of the national importance of the proposed endeavor lacks specific details concerning how the proposed endeavor would impact the U.S. economy or create U.S. jobs on a scale rising to the level of national importance. While any economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the economic activity his proposed endeavor generates will rise to the level of affecting the U.S. economy. For example, the Petitioner estimated that in opening his own dental practice, he will increase tax revenue and directly create seven jobs. However, he has not provided corroborating evidence to suggest that such benefits would rise to the level of affecting the U.S. gross domestic product or otherwise reach a scale commensurate with national importance. Additionally, even if he opens his own dental practice, he has not offered sufficient corroborating evidence to suggest that such activities would resolve or significantly mitigate the U.S. dentist shortage such that his endeavor would have a nationally important impact.

The Petitioner submitted numerous reference letters in support of his eligibility for a national interest waiver. We acknowledge that the authors of the letters praise the Petitioner's personal and professional achievements and qualifications. However, the authors do not discuss the Petitioner's proposed endeavor or meaningfully demonstrate how it would have national importance. The evidence and level of detail provided do not suggest that the Petitioner impacted the fields of healthcare, dentistry, or business in the past. Even if the letters had demonstrated this, it would not explain how the United States would benefit from his work on a level rising to national importance. The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. *Id.* See also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (expert opinion testimony does not necessarily purport to be evidence as to "fact"). Overall, the reference letters do not sufficiently address the proposed endeavor or explain why it has national importance.

The Petitioner submitted various media articles and reports that, among other topics, discuss the importance of dental care, the unequal access to it, the expense of it, as well as how immigrants and immigrant entrepreneurs benefit the United States. While we acknowledge that dentistry and dental care is important, as are immigrants and entrepreneurialism, none of the articles and reports discuss the Petitioner's specific proposed endeavor. Moreover, 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 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 that while patients would benefit from his dental care and that students, dentists, and businesses would benefit from his advice, assistance, and research, he has not offered a sufficient explanation for how these discrete and individualized benefits would rise to the level of national importance or would impact the field more broadly. Although the Petitioner asserted that his proposed endeavor has national importance, he offered little corroborative evidence or explanation to support his claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). Accordingly, we conclude that even if the Petitioner had not materially changed the focus of his proposed endeavor, he has not provided sufficient evidence that would establish the national importance of his proposed endeavor.

C. Well Positioned to Advance the Proposed Endeavor

As the foregoing analysis explains, the Petitioner materially changed his proposed endeavor such that we cannot determine whether he is well positioned to advance it under the Dhanasar analysis. Even if we were to accept all the various and divergent proposed endeavor claims, the evidence would still be insufficient to demonstrate the national importance of them. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. However, because the Director denied the petition based upon the second Dhanasar prong and not the first, we offer additional analysis of the Petitioner’s eligibility under the second Dhanasar prong.

The second prong shifts the focus from the proposed endeavor to the Petitioner. The Petitioner offers numerous examples of his past achievements in order to suggest that he is well positioned to advance his proposed endeavor. We acknowledge the Petitioner’s claims that he has provided a detailed explanation of his career, his plans to fund the dental practice and drive his proposed endeavor forward, and that he has identified where his dental practice will be located. However, the Petitioner has not provided a foundation or corroborating details to support the income projections he provided in his business plan. As such, these figures appear to be little more than conjecture. The record provides insufficient evidence of concrete steps the Petitioner has taken towards his proposed endeavor, nor do we have evidence that he has the proper medical and business licenses to begin his proposed endeavor. While we acknowledge that he may have his dental hygienist license in Illinois, this is insufficient to conclude that he has the requisite education and license to practice as a dentist or orthodontist in the United States. Moreover, the Petitioner has not explained how he will conduct extensive research while also working as a dental hygienist and opening his own practice. Additionally, the Petitioner has not explained how he will have sufficient time to assist businesses, teach dental students, and work as a medical scientist.

Returning to the Petitioner’s reference letters, we note that many of the authors recognize the Petitioner’s, awards, achievements, and publications, but none of the authors offer sufficient details to suggest that he is well positioned to carry out “extensive research,” advise U.S. businesses and dentists, or to open his own dental practice. For example, [REDACTED] stated that the Petitioner developed a unique methodology for teaching, but her letter does not discuss the specifics of this

methodology or explain how such methods would position him well to carry out his proposed endeavor. Similarly, [REDACTED] mentions that the Petitioner improves people's lives and wellbeing, but she does not expand upon this generalized claim such that it would support a finding that the Petitioner is well positioned to advance his proposed endeavor. [REDACTED] operates the dental practice where the Petitioner has accepted a job as a dental hygienist. [REDACTED] describes the Petitioner's duties at her office, his qualifications, and what the Petitioner has achieved for her practice, but she does not suggest that he is well positioned to perform all the activities he described in his proposed endeavor. Generalized conclusory statements that do not identify specific reasons and supporting details have little probative value. See *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). We conclude that these letters do not support a finding that the Petitioner is well positioned to advance his proposed endeavor.

While we acknowledge the Petitioner's evidence and arguments, he has not overcome the Director's conclusions that the Petitioner has not established eligibility under this prong. Accordingly, we conclude that the record does not support a finding that the Petitioner is well positioned to advance his proposed endeavor.

III. CONCLUSION

The documentation in the record does not establish a specific and consistent proposed endeavor, nor does it establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision. Furthermore, the record does not establish that the Petitioner is well positioned to advance his endeavor. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in Dhanasar would serve no meaningful purpose.

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 third Dhanasar prong. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); 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).

As the Petitioner has not met the requisite first and second prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.