



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

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

In Re: 23052362

Date: OCT. 20, 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 nurse, 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 Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

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.

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).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², 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.

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)

¹ 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) (*NYSDOT*).

² 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).

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.³

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the issue to be determined on appeal 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 agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating:

I found here [the United States] how valued the health professional is, and also the scarcity of this professional, and its necessary in acting nurses. I hope soon to be able to collaborate with my professional experience, because nursing is an art of caring unconditionally, is caring for someone you have never seen in your life, but still help and do your very best for them. You can't do it just for money, I believe it has to be done for and with love anywhere in the world.

In response to the Director's request for evidence (RFE), the Petitioner stated:

I have included . . . a full business plan better defining my proposed endeavor in the healthcare industry, and my specific contributions that will be [sic] of national importance which includes many aspects including my impact within the Healthcare industry, my potential to employ U.S. workers, how my endeavor will benefit societal welfare, and it impacts matters that have been described as having national importance and are the subject of national initiatives.

To better understand the aforementioned, I would like to first talk about my proposed endeavor [redacted] and will provide [redacted] [redacted] and [redacted]

[redacted] will offer excellent care in the patient's home with portable equipment and a vast amount of materials and medications packed in appropriate (rescue) bags. The professional will examine and, if necessary, the professional will perform and procedure necessary for stabilization in your home or removal to a hospital unit.

[redacted] if the patient is in care at a clinic and who has contracted our 24-hour removal service, they will have access to the advanced support ambulance for immediate transport of the patient.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

In response to the Director's notice of intent to deny, the Petitioner referenced her business plan and claimed that her "proposed endeavor, [redacted] will provide independent medical transport services, with 3 options being: Basic Removal, Advanced Support Removal and 24-hour Clinic Removal," and "[t]he company's operating area will be the [redacted] region." On appeal, the Petitioner contends:

[B]ased on the vision of the American government and on national initiatives that demonstrate the significant potential for impact and, consequently, national importance of my endeavor as a Nurse heading a [redacted] and, therefore, that my proposed endeavor has national or even global implications within a particular field (healthcare transportation) and impacts a matter that a government entity has described as having national importance or is the subject of national initiatives.

The Director determined that the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance aspect of her proposed endeavor.

At the outset, a petitioner must establish eligibility for the requested benefit at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). As indicated above, the Petitioner initially claimed that her proposed endeavor involved her "collaborat[ion] with [her] professional experience" as a nurse. The Petitioner did not claim that she intended to create a new business, [redacted]. In fact, the record does not reflect her intention to open and operate an ambulatory service company or work in healthcare transportation prior to the Director's issuance of the RFE and only offered this proposed endeavor after receiving the RFE. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of operating an ambulatory service company.

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. Here, the Petitioner must demonstrate the national importance of her providing nursing services rather than the national importance of nursing or the wide range of healthcare fields or industries in which she intends to work. 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.

Furthermore, although the record contains a "Summary of Professional Qualifications," the Petitioner's experience, skills, and abilities in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is

whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong.

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 she contended the importance of the health profession and scarcity of nurses in the United States, the Petitioner has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of her specific proposed 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, the record does not show that the Petitioner's proposed endeavor of providing nursing services stands to sufficiently extend beyond her potential or futuristic patients, to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance.

In addition, the Petitioner has not established that the specific endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While she claimed a shortage of nurses in the United States, that issue is addressed by the U.S. Department of Labor through the labor certification process. In addition, the Petitioner did not demonstrate how providing her nursing services would somehow influence those figures. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that the benefits to the U.S. regional or national economy resulting from her nursing services would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 890.

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.⁴

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established that 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.

⁴ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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).