



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

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

In Re: 26381794

Date: APR. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a dentist/dental surgeon, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, as well as a national interest waiver 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 Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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, under section 203(b)(2) of the Act.

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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>1</sup>, grant a national interest waiver if the petitioner demonstrates that:

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<sup>1</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).

- 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.

## II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>2</sup> Therefore, the sole issue to be addressed is whether the Petitioner has established that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. In denying the petition, the Director addressed the first and third prongs of the *Dhanasar* analytical framework and concluded that the Petitioner did not demonstrate that he meets either of them.

On appeal, the Petitioner asserts that the Director did not objectively evaluate all the submitted evidence under the preponderance of the evidence standard and instead applied a “novel standard.” He maintains that the evidence was sufficient to demonstrate that he meets all three prongs under the *Dhanasar* framework and otherwise warrants a national interest waiver as a matter of discretion.<sup>3</sup>

For the reasons discussed below, we agree with the Director’s conclusion that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

### A. The Proposed Endeavor

The Petitioner demonstrated that he worked as an associate and head dental surgeon at various dental clinics in Brazil between 1991 and 2016. He indicates he has worked for several dental practices in Florida since 2017, initially as a dental assistant, subsequently as an orthodontic assistant and, since 2021, as a dental hygienist.<sup>4</sup>

On Part 6 of the petition, the Petitioner identified his intended occupation as “dental researcher” but provided the job description and Standard Occupational Classification (SOC) Code corresponding to oral surgeons. Neither of the two professional plans the Petitioner provided in support of the petition indicate his intent to pursue any research activities in his field.

In his initial professional plan and statement, submitted at the time of filing, the Petitioner stated he intends to start his own dental health clinic and “to work as a Dentist in the United States, where I will specifically serve underserved U.S. regions – which often suffer from a lack of adequate dental health services.” He did not claim or provide evidence that he is licensed to practice dentistry in the United

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<sup>2</sup> The Petitioner established that he holds an advanced degree in dental surgery from a Brazilian university.

<sup>3</sup> The Petitioner indicated on the Form I-290B, Notice of Appeal or Motion, that he would submit a brief and/or additional evidence to this office within 30 days of filing the appeal. We did not receive a supplemental submission within that time frame and therefore consider the record to be complete as presently constituted.

<sup>4</sup> The record reflects that the Petitioner was initially admitted to the United States in F-2 status as the spouse of an F-1 nonimmigrant student. He was granted an employment authorization document in July 2018 in conjunction with his filing of a Form I-485, Application to Register Permanent Residence or Adjust Status.

States but stated that he had passed both portions of the National Board Dental Examinations and described this as “an achievement needed to become a licensed Dentist in the United States.”

In his updated professional plan, submitted in response to the RFE, the Petitioner stated he will work as an “Entrepreneur, Dental Surgeon and Dentist,” and will open a network of clinics aimed at patients with special health care needs. He noted that he would start in Florida and Virginia and grow a “vast network across the country” with each clinic creating direct and indirect jobs and likely to generate over \$1 million in gross income. The Petitioner also indicated that he intends to deliver “courses, lectures, and webinars” for other dentists to prepare them for the care of patients with special needs.

The Petitioner provided evidence that he had been accepted into a two-year residency in Advanced Education in General Dentistry (AEGD) at [REDACTED] University in Florida in 2022 and that he would be able to fully pursue his plans after completing this residency, obtaining his dental license, and “becoming certified in Special Health Needs (SHCN) patients.” A letter from the AEGD residency program director indicates that the Petitioner is scheduled to complete the program in June 2024; the Petitioner did not provide a timeline for his licensure or certification in his chosen specialty.

Finally, although the Petitioner indicated in both of his professional plans that he intends to open his own dental clinic or network of clinics, he also provided job offer letters from four established dental practices seeking his services as a contract or full-time associate dentist, contingent upon his receipt of a license to practice dentistry in the United States.

#### B. Substantial Merit and National Importance

To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that his proposed endeavor has both substantial merit and national importance. This prong of the *Dhanasar* framework 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. The record supports the Director’s determination that the Petitioner’s proposed endeavor, which aims to improve the oral health of U.S. patients, has substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. In support of his claim that he can satisfy the first prong of the *Dhanasar* analytical framework, the Petitioner provided published articles from major media, professional, and industry publications that address the lack of affordable dental care and dental insurance in the United States, nationwide and regional labor shortages in the dental health profession, inequalities in the availability of dental care across different demographic populations, and serious health outcomes that can be linked to a lack of adequate dental care.

This evidence provides support for the Petitioner’s claim that his proposed work has substantial merit. However, in evaluating 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.

In his initial professional plan, the Petitioner emphasized that “my proposed endeavor to open a clinic in an underserved U.S. region is of national importance to the country, as it seeks to alleviate a nationwide health crisis – in which a vast portion of Americans do not have access to oral health services.” He further stated that his dental practice will have “substantial economic effects in the United States, as dental offices need a very complete staff including receptionists, assistants, hygienists, sterilization specialists as well as contracted help.” He stated that by creating these jobs, his endeavor will “spur economic development and tax production throughout local economies” which will “trickle down to the rest of the country.” The Petitioner maintains that any clinic he opens “would be revitalizing underserved U.S. communities – both economically and socially.”

In his updated professional plan, the Petitioner indicated his intent to serve both underserved geographic areas of the United States, as well as focusing on patients with special needs. As noted, the updated plan states that the Petitioner will open “a vast network” of clinics focusing on this patient population, with each office generating the types of jobs mentioned above, as well as jobs for specialized therapists, anesthesiologists, larger teams of dentists, managers, accountants, and lawyers. The Petitioner stated that “the network of clinics for special needs patients will generate more jobs in laboratories, nurses, maintenance staff” and workers in the medical and dental equipment field. He maintains that the endeavor will progressively impact both the U.S. economy as well as other national and social interests by “promoting oral healthcare across underserved regions for socially underserved people.”

The record supports a determination that oral health is important to the overall health of the population and that the United States has many underserved communities that lack access to adequate dental care. However, the record does not establish that the work of one dentist or dental surgeon would have a nationally significant impact in this field. The record contains statistics intended to show that there is a shortage of dentists in the United States, but this shortage is likewise insufficient to demonstrate the national importance of any clinic or clinics that the Petitioner may eventually establish, pending his completion his studies, licensure, and specialized certification. A shortage of qualified professionals alone does not render the work of an individual dentist nationally important under the *Dhanasar* precedent decision. Several of the Petitioner’s claims of national importance could reasonably apply to any dental practice, but Congress did not provide a blanket exemption for dentists with respect to the job offer and labor certification requirement.<sup>5</sup> Foreign dentists are typically subject to this requirement and therefore the intrinsic benefits of operating a clinic are not presumptive grounds for waiving that requirement.

The Petitioner further claims that his clinic or clinics will have substantial positive economic effects, and he has submitted supporting articles that emphasize the importance of entrepreneurship in the U.S.

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<sup>5</sup> The U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. A determination as to whether the benefits inherent in the labor certification process are outweighed by other favorable factors relates to the balancing analysis set forth under the third prong of the *Dhanasar* analytical framework.

economy and the critical contributions of immigrants to America's start-up economy. He stated that by creating jobs, his endeavor will "spur economic development and tax production throughout local economies," which will "trickle down to the rest of the country." However, the burden is on the Petitioner to establish that the economic effects of his proposed endeavor are "substantial." The Petitioner provided evidence that he has offers to work as a dentist for an existing practice, but also stated that he plans to open a clinic of his own and plans to establish a "vast network" of clinics. While he submitted personal statements generally describing his future endeavor, he did not provide specific business plans or otherwise illustrate the number of individuals he expects his proposed clinic or clinics to hire, train and support, the amount of tax revenue they would be expected to generate, or any proposed locations in support of his claim that he would impact an economically depressed area. Without this information, he has not adequately supported his claims regarding direct and indirect job creation and the expected direct and indirect economic benefits of operating one or more dental clinics. As such, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*.

The Petitioner has also indicated his intent to deliver "courses, lectures, and webinars" for other dentists to transfer his knowledge. 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. 26 I&N Dec. at 893. The same reasoning applies here. The Petitioner has not shown that his future teaching activities will have a significant national impact on the practice of dentistry in the United States. He has not, for example, provided any detailed plan for reaching a wider audience through "courses, lectures and webinars." As such, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his own proposed practice and its patients to impact the oral health field or the U.S. economy more broadly at a level commensurate with national importance. Further, the Petitioner indicates that his future teaching activities would focus specifically on the treatment of patients with special health care needs, a patient population in which he claims no previous training, and in which he indicates he will seek certification after completing his residency and licensure requirements.

Finally, the Petitioner has emphasized the importance of his industry or profession, his long career as a dental surgeon in Brazil, and his expected leadership role in his own future practice; however, these factors do not sufficiently establish the national importance of the proposed endeavor. While the Petitioner's professional qualifications and prior employment are important and are documented in the record, the Petitioner's expertise acquired through his education, training and employment relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong.

For the reasons discussed, the Petitioner has not demonstrated that his proposed endeavor would be of national importance, and he therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework. The Director, who did not address the second *Dhanasar* prong, also concluded that the Petitioner did not establish that he is eligible under the third *Dhanasar* prong. However, a discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve those issues and will dismiss the appeal. See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and

decisions 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).

### III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.