



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

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

In Re: 28020213

Date: AUG. 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and occupational therapist, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established eligibility for 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.

To establish eligibility for a national interest waiver, petitioners must 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>1</sup>, grant a national interest waiver if:

- 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.

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. At initial filing, the

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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).

Petitioner's cover letter stated that her "proposed endeavor is to own and operate [REDACTED] [REDACTED] the company will be a registered and licensed massage and Wellness Center Clinic for women who are planning to get pregnant, who are already in the gestational period, or who are in the postpartum recovery process," and "[t]he company will be based in [REDACTED] VA." Furthermore, the Petitioner claimed her proposed endeavor "will directly create 9 new job opportunities in the US, in addition to these direct employment opportunities, [REDACTED] will also create additional indirect and induced jobs." Moreover, the Petitioner asserted that her "projected 3-year revenue of \$1,051,000 also contributing to create/sustain 13.5 indirect and induced jobs." In response to the Director's request for evidence, the Petitioner submitted a business plan listing various employment positions and projecting five-year revenues from \$798,000 to \$1,482,000.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner maintains the national importance of small businesses, entrepreneurship, job creation, and preventive health services. However, 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 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 specific, proposed endeavor of owning and operating [REDACTED] rather than the importance of small businesses, preventive healthcare, or entrepreneurship.<sup>2</sup> 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 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.

Moreover, the Petitioner references her submission of an expert opinion letter, who claimed the Petitioner's proposed endeavor has national importance. The letter, however, discusses the importance of physical therapists rather than the national importance of the specific, proposed endeavor - owning and operating [REDACTED]. Furthermore, the letter does not explain how the Petitioner's business would have broader implications for our country rather than limited to the [REDACTED] Virginia area. 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. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how her proposed endeavor largely influences the field and rises to the level of national importance. In *Dhanasar*, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact the field more broadly. *Id.* at 893. Likewise, the record does not show through supporting documentation how her wellness business and services stand to sufficiently extend beyond her prospective clients and patients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Further, the Petitioner did not demonstrate how her business plan's claimed revenue and employment projections, even if credible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although the revenue forecasts range from

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<sup>2</sup> The Petitioner's arguments and evidence relate more to the substantial merit aspect of the proposed endeavor rather than the national importance part.

approximately from \$800K to \$1.5M, the business plan does not establish that the benefits to the regional or national economy would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Similarly, although the Petitioner claims her business would create 9 direct jobs and 13.5 indirect/inducted jobs, the Petitioner did not demonstrate that such future staffing levels would provide substantial economic benefits to Virginia or the region or U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not show that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not establish that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner’s proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

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.<sup>3</sup>

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

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<sup>3</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 alternate issues on appeal where an applicant is otherwise ineligible).