



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

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

In Re: 28022137

Date: AUG. 23, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a pastor, 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 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 Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree, and that she 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.

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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2). In addition, "profession" is defined as 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 into the occupation.<sup>1</sup> 8 C.F.R. § 204.5(k)(3).

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

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<sup>1</sup> Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver 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.

## II. ANALYSIS

### A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). In response to the Director’s request for evidence (RFE), the Petitioner presented her Master of Arts degree in Christian Leadership that she received from [REDACTED] University on August 7, 2021. The Petitioner, however, received her master’s degree after filing the petition.<sup>3</sup> Eligibility must be demonstrated at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12).

Alternatively, a petitioner may present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B). The Director acknowledged that the Petitioner holds the foreign equivalent of a U.S. baccalaureate degree, but concluded that the letters she submitted from her former employers did not show at least five years of progressive post-baccalaureate experience in her specialty. *See* 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner initially provided a May 2011 certification from [REDACTED] stating that she “was an employee for our institution under the following information”:

Date of Incorporation: 08/27/2009

Date of Resignation: 05/11/2011

Contract type: Full time, under the law #50

Holding Position: Branch Manager

Department: Proc. and Formac. Oficinas Reg. Bogota

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<sup>2</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).

<sup>3</sup> The petition in this matter was filed on January 22, 2021.

The Petitioner also submitted a September 2020 certification from [redacted] indicating that she “was employed of this institution under a full time contract, between June 8, 1995, and December 25, 2007, her last position was a professional one, at Credit Evaluation Department.”<sup>4</sup> The Director’s RFE explained that this letter was insufficient because it did not provide “the company’s full address, a description of the [Petitioner’s] experience, and specific duties.” In response, the Petitioner stated that a representative from [redacted] told her that “the bank cannot issue a letter with their address, or in any other type of format other than in the original format provided.”

In denying the petition, the Director explained that “[p]rogressive experience must be documented by letters from current or former employers giving the name, address, and title of the employer, and a description of the experience of the [petitioner].” The regulation at 8 C.F.R. § 204.5(g) provides, in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien’s experience or training will be considered.

The Director’s decision further noted that the Petitioner did “not provide secondary evidence” such as a statement from a former manager or employee at the bank who “is willing to provide the required information.” In addition, the Director stated that the Petitioner’s banking experience was not in her specialty, “the Pastoral field of endeavor.”

With the appeal, the Petitioner offers a December 2022 certification from [redacted] indicating that she “provided her services to this entity through an indefinite term contract between June 8, 1995 and December 25, 2007, her last position held was Professional I Credit Evaluation Department.” While this updated certification identifies the bank’s address, it did not include a specific description of the duties she performed. *See* 8 C.F.R. § 204.5(g). Nor did it indicate that her experience with [redacted] was progressive in her specialty. *See* 8 C.F.R. § 204.5(k)(3)(i)(B). Because the Petitioner has not submitted letters from her employers with a specific description of her duties showing that she has at least five years of progressive post-baccalaureate experience in her specialty, we agree with the Director that the Petitioner has not demonstrated her eligibility as a member of the professions holding an advanced degree.

## B. National Interest Waiver

The remaining issue 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.<sup>5</sup> The Director determined that the Petitioner did not satisfy the first and third prongs set forth in the *Dhanasar* precedent decision.

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<sup>4</sup> This certification did not include the bank’s address.

<sup>5</sup> The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, “[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate.” Alternatively, U.S. Citizenship and Immigration Services will accept parts J, K, and L of Form ETA 9089, Application for Permanent Employment Certification. *See* 6 *USCIS Policy Manual* F.5(D), <https://www.uscis.gov/policy-manual/volume-6-part-f>

In her appeal brief, the Petitioner argues that she relied upon the Director's statement in the RFE that she had submitted sufficient evidence to satisfy the first prong of the *Dhanasar* framework. She contends, therefore, that she "did not submit additional evidence of substantial merit and national importance when responding to the RFE. To deny the Petitioner's petition based upon her detrimental reliance upon a USCIS statement is inequitable and should be remedied via this appeal." We agree with the Petitioner that the Director's RFE should have informed her that she did not meet the first prong of the *Dhanasar* framework and afforded her an opportunity to present further information and evidence regarding the national importance of her proposed endeavor. Regardless, the Petitioner has had an opportunity to address the Director's decision's first prong analysis on appeal, and we review the record on a de novo basis. *See Matter of Christo's, Inc.*, 26 I&N Dec. at 537 n.2. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to her proposed endeavor, the Petitioner indicated that she intends to continue to work as a pastor conducting church services at [REDACTED] Texas. She also plans to offer "her Detox and Healing Program to the greater [REDACTED] community through her work with [REDACTED] Substance Abuse Prevention." The Petitioner further stated:

[REDACTED] holds service every Sunday at Studio Movie Auditorium - Town and Country. In addition, I hold my 12-week Detox and Healing Program, which currently has 9 participants, every Tuesday online and every 15 days in-person on Sundays after the service. . . . I feel confident that I can positively impact the community in various ways. The Detox and Healing Program . . . aims to eliminate the self-destructive behaviors of participants by healing their past traumas. I focus on healing various types of issues people face: financial crisis, insecurities, depression and anxiety, marital and parenting issues, chronic stress, anger and fear, and other problems that hold people back.

The Petitioner submitted her strategic plan for [REDACTED]<sup>6</sup> This plan includes information about her ministry and its services, community partnerships, financial forecasts and projections, and a discussion of the Petitioner's qualifications and experience, and a personnel plan. While her plan does not provide future staffing estimates, it offers income projections of \$9,260 in December 2023, \$9,789 in December 2024, \$10,348 in December 2025, and \$11,241 in December 2026.

The record includes information about opioid addiction and COVID-19 dangers, the unique challenges of COVID-19 for people in recovery, binge drinking during the pandemic and coping solutions, intimate partner violence during COVID-19, the increase in domestic abuse during the pandemic, and mental health and suicidal ideation during the COVID-19 pandemic. In addition, the Petitioner provided articles discussing crime and violence in Houston, unfortunate events in Houston that have

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chapter-5. Because the Petitioner has not submitted either of these forms, she has not properly applied for a national interest waiver.

<sup>6</sup> The record contains documentation relating to the Petitioner's formation and operation of this church, including its Internal Revenue Service tax exempt status as a 501(c)(3) organization and Employer Identification Number, rental agreement, sign-in sheet, and other evidence of its activities.

adversely affected children's mental health, poverty and mental health, and the links between mental and financial health. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

Furthermore, the Petitioner provided letters of support from C-V-, J-C-R-, E-S-, W-R-D-, Dr. P-T-, D-G-, P-H-, P-R-M-, M-P-, D-O-, Dr. J-C-C-, C-J-, S-O-, M-A-, R-R-, and C-B- who discuss her education, ministerial skills, church and community activities, and addiction recovery program. The Petitioner's knowledge, skills, and efforts in her field, however, 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 he proposes to undertake has national importance under *Dhanasar*'s first prong. The aforementioned letters do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work as a pastor and a community services provider for trauma and substance abuse victims offers broader implications in her field or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of her proposed endeavor. The Director stated that the Petitioner had not shown that her undertaking offers a broader impact beyond her church community and constituents. Additionally, the Director indicated that the Petitioner had not demonstrated that her proposed work "has significant potential to employ U.S. workers," offers "substantial positive economic effects," or "will broadly enhance societal welfare."

In her appeal brief, the Petitioner argues that her proposed endeavor has national importance because "the United States is suffering a mental health crisis," "suicide rates and overdose rates are extremely high," and "overdose rates increased dramatically during the COVID pandemic." She asserts that her undertaking will serve "the Spanish speaking community" which "is historically underserved in the U.S. due to both systemic racism and the Hispanic community's distrust of those who do not speak Spanish and/or understand their cultural norms." The Petitioner also contends that participants in her "program will be addressing their mental health and substance abuse issues. This will arguably make [the Petitioner's] clients productive members of society in that they will be able to either return to the workforce or compete in the workforce at a higher level." In addition, the Petitioner claims that her program "will hopefully end participants' use of illegal substances. This too provides an economic benefit to the U.S. as community health resources should be utilized at a lower level." Furthermore, the Petitioner contends that one location where her program is being implemented is "in an economically depressed area" and therefore stands to contribute to future economic growth in our country.

In determining national importance, the relevant question is not the importance of the field, 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.

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 the Petitioner's statements reflect her intention to provide valuable recovery and ministerial services to her clients and congregants, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her 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, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her recovery program or church congregation to impact her field, U.S. public health, or U.S. societal welfare more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. 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 benefits to the regional or national economy resulting from the Petitioner's community projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the third prong outlined in *Dhanasar*. 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).

### III. CONCLUSION

The Petitioner has not established that she satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree. Further, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established 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.