



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

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

In Re: 28963743

Date: DEC. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physician specializing in orthopedics and traumatology, seeks an employment-based second preference (EB-2) immigrant classification as an individual with an advanced degree 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 record did not establish that the proposed endeavor had substantial merit and national importance, that the petitioner was not well positioned to advance the endeavor, and that it would not be beneficial to the United States to waive the job offer requirement. 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.¹

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. Section 203(b)(2)(B)(i) of the Act.

If a petitioner demonstrate 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

¹ While we may not discuss each piece of evidence individually, we have reviewed and considered each one.

Immigration Services (USCIS) may, as matter of discretion,² 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. EB-2 Classification: Advanced Degree

The Director did not address whether the Petitioner met the requirements for the underlying EB-2 classification. The Petitioner stated he was qualified for the EB-2 classification because he had the foreign equivalent to a bachelor's degree and 5 years of progressive experience. The record contains evidence that the Petitioner obtained a title of physician (*titulo de medico*) degree from the [redacted] [redacted] in Brazil and completed his medical residency in orthopedics and traumatology. The record also includes reference letters in support of his experience as a doctor in Brazil, and an academic evaluation that his foreign degree is equivalent to a master of science in medical science.

As the record does not establish by a preponderance of the evidence that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.³

B. National Interest Waiver

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, 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.

1. Substantial Merit

The Director stated the Petitioner's proposed endeavor was not specific enough to evaluate its substantial merit. We disagree and conclude that the record sufficiently establishes the proposed endeavor and there is substantial merit to his endeavor. For substantial merit, we may consider evidence of the endeavor's potential significant economic impact, however, "endeavors related to research, pure science, and the furtherance of human knowledge may qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States." *Dhanasar*, 26 I&N Dec. at 889.

² 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).

³ 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 alternative issues on appeal where an applicant is otherwise ineligible).

In the professional plan initially submitted with Form I-140, the Petitioner stated that his proposed endeavor was:

[T]o bring my years of experience as a doctor and surgeon to the United States to help alleviate the increasing demand for such professionals. Specifically, I can:

1. Work in any clinic or hospital system, and improve patients' quality of life;
2. Provide training and support to other doctors and professionals in the industry; and/or;
3. Serve as an instructor to students studying to enter the medical field.

He further explained the types of injuries he will treat and their common occurrence in the United States and discussed a shortage of doctors in the United States that is projected to grow. The Petitioner's professional plan is supplemented by his resume and reference letters from other doctors in his field attesting to the Petitioner's experience, as well as an expert opinion letter, and industry reports and articles. Based on the evidence mentioned above, we conclude his proposed endeavor is of substantial merit as it relates to the medical field and furthers human knowledge through instructing others in his industry.

2. National Importance

In determining whether the proposed endeavor is of national importance, we consider its potential prospective impact. In following *Dhanasar*, we look for evidence that the proposed endeavor has significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advancement of a valuable technology or field of study.

The Petitioner submitted industry reports and articles showing that there is a shortage of doctors in the United States and that this shortage is projected to increase in the coming years, along with the need for doctors increasing as the U.S. population grows and ages. He also provided information on the widespread nature of orthopedic injuries in the United States. However, a shortage of qualified professionals does not render the work of an individual physician or surgeon nationally important under the *Dhanasar* decision. Here, the Petitioner has not established that his specific proposed endeavor stands to broadly impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Another issue the Petitioner discusses is that he will be saving lives, optimizing lifestyle by treating patients, and training the next generation of doctors through his proposed endeavor. Although we see the substantial merit in all the above, for a national importance determination, the scope of the proposed endeavor must rise to the level of national importance. The record does not establish that his proposed endeavor will have national or global implications within his field. *Id.* 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 extend beyond his students to impact his field more broadly. *Id.* at 893.

We conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his patients or students to impact the medical field at a level commensurate with national importance. Here, the Petitioner has not provided sufficient documentary evidence that his proposed endeavor would impact the medical industry more broadly rather than benefiting his patients and students. Without sufficient documentary evidence of the broader impact, the Petitioner's proposed endeavor does not meet the national importance element of the first prong of the *Dhanasar* framework.

In addition, the Petitioner states in the appeal brief and expert opinion letter from his initial petition, that his proposed endeavor would have an economic impact. The appeal brief discusses the field of orthopedics and how treating patients can reduce their burden on society. The expert opinion letter discussed positive impact the medical field has on the economy with job creation, purchases of goods and services, and the generation of state and local taxes. For a national importance determination, the endeavor “may have national importance because it has national or even global implications within a particular field, such as certain improved manufacturing processes or medical advances.” *Id.* at 889. It may also have “significant potential to employ U.S. workers” or “other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 890. The record shows how the field in general may have an economic impact, but it does not show how the Petitioner’s specific endeavor will have substantial positive economic effects or national implications that rise to the level of having national importance.

Lastly, the appeal brief states that the Petitioner could provide services in rural or underserved areas that have a higher demand for physicians and that his impact could be more substantial depending on where he will be practicing. However, there is no information or evidence to substantiate the claim that he plans to work in a rural or underserved area. In addition, the Petitioner previously stated in response to a request for evidence that he was not applying for a physician national interest waiver under section 203(b)(2)(B)(ii) of the Act,⁴ which undermines his claim that he plans to provide services in a rural or underserved area.

The evidence in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, therefore 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 his eligibility under the second and third prongs outlined in *Dhanasar*. See *Bagamasbad*, 429 U.S. at 25; see also *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

⁴ Section 203(b)(2)(B)(ii) of the Act provides a national interest waiver for physicians who agree to work in underserved areas or at a U.S. Department of Veterans Affairs health care facility, and meet certain requirements. See *6 Policy Manual* F.6(b), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-6>.