



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

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

In Re: 28980912

Date: DEC. 19, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an international dental graduate, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *See 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 Director of the Nebraska Service Center denied the petition, concluding the record did not establish 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 petition 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.

Whilst 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). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen’s proposed endeavor has

both substantial merit and national importance, (2) the noncitizen 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 noncitizen 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 noncitizen. To determine whether the noncitizen 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, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors 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.

## II. ANALYSIS

To satisfy the *Dhanasar* analytical framework's first prong, the Petitioner must demonstrate that their proposed endeavor has both substantial merit and national importance. This prong 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 here supports the Director's determination that the Petitioner's proposed endeavor, which aimed to develop the field of dentistry in the United States by addressing gaps in access to dental care in the United States and promoting general oral hygiene, had substantial merit.

But, when evaluating national importance, we shift the focus from the importance of the field or industry within which a petitioner will work to "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 determining whether a proposed endeavor has national importance, we consider its potential prospective impact. In support of their claim that they can satisfy the *Dhanasar* analytical framework's first prong, the Petitioner provided articles from major media, professional, and industry publications that addressed 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.

It is unclear from the evidence in the record that the work of a single healthcare professional in the field of dentistry, irrespective of that proposed endeavor's success or failure, would have a significant impact on the field beyond its immediate sphere of influence. The evidence in the record does not highlight how the work of one professional could have broader implications that address the shortage of professionals the Petitioner asserts would be addressed by their function in their proposed endeavor. And if in fact these shortages can be addressed by adding additional able, willing, qualified, and available international workers like the Petitioner, they would be better addressed through the U.S. Department of Labor's (DOL) labor certification process. The labor certification process permits U.S. employers to test the labor market to document the lack of able, available, qualified, and willing U.S. workers for positions with U.S. employers.

And the record contains insufficient evidence to support the positive economic effects the Petitioner expects their proposed endeavor to realize. The Petitioner roots the potential positive effects of their unrealized dental clinic in its potential for job creation and tax revenue generation. But the record contains insufficient documentation to support or even describe job creation of any significance such that it rose to a level commensurate with national importance. Moreover, the Petitioner has not identified where they intend to establish their endeavor, which impedes an evaluation of whether the proposed job creation would address employment in economically depressed areas. The record is similarly silent about the other potential positive economic effects identified by the Petitioner, such as tax payments, which inhibits an evaluation of whether the Petitioner's indicated benefits from taxation rise to the level of national importance.

The Petitioner also indicated in the record that their hiring and training plans would lead to knowledge proliferation in the field of dentistry. This dental knowledge proliferation is akin to teaching activities. In *Dhanasar*, we considered a petitioner's teaching activities and concluded that teaching activities do not rise to the level of having national importance because they do not impact a field of endeavor more broadly than the immediate effect or influence on the cohort receiving the teaching. *See Dhanasar*, 26 I&N Dec. at 893. The record does not adequately support that the Petitioner's dental knowledge proliferation through their hiring and training plan will have an impact on the practice of dentistry in the United States. The record does not have a cognizable or detailed plan for reaching an audience wider than the individuals it will purportedly hire and train in the future.

The manifest thrust of the Petitioner's claim of eligibility for the act of discretion to waive the requirement of a job offer, and thus a labor certification, in the national interest comes from the Petitioner's claims regarding their profession's importance, their past career as a dentist in their home country, and their dedication to their field. But these attributes, critical as they may be for an endeavor's success, are not germane to the question of whether a proposed endeavor elevates to a

position of national importance. We are not concerned with the individual petitioner when evaluating the first prong of the *Dhanasar* analytical framework; we are focused on the petitioner's proposed endeavor. The success of the endeavor, or attributes that could tend to make the endeavor more successful, are consequently not as important as determining whether the proposed endeavor itself stripped away from a petitioner, has attributes that would highlight the prospective positive impact of its broader implications or positive economic effects rising to a level of national importance.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that they do not merit a favorable exercise of discretion to waive the requirement of a job offer, and therefore a labor certification. And we reserve the issue of whether the Petitioner demonstrated categorical eligibility for EB-2 classification as well as eligibility for a discretionary national interest waiver under the remaining prongs of the *Dhanasar* analytical framework. *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). So we dismiss the Petitioner's appeal.

**ORDER:** The appeal is dismissed.