



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

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

In Re: 25672784

Date: JUL. 06, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a priest, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) 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 Texas Service Center denied the petition, concluding the Petitioner misrepresented materials facts,¹ and so 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, and because the evidence in the record does not demonstrate the Petitioner's eligibility for a waiver of the job offer requirement and thus the labor certification under the analytical framework we first explicated in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), we will dismiss their appeal.

¹ The record indicates the Ukrainian Orthodox Church of the USA defrocked the Petitioner, removed them from their list of clergy, and revoked their authorization to celebrate liturgical services and holy mysteries of the church. Since the Petitioner represented themselves as a priest after the date of his apparent defrocking, the Director entered a finding of willful misrepresentation. The Petitioner states on appeal that they were unaware they had been defrocked. So the record as presently constituted contains an unresolved conflict of fact that does not support the Director's finding of willful misrepresentation and we hereby withdraw it. Nevertheless, the apparent timing of the Petitioner's representations in this matter reflected that a reasonable question of fact existed about whether the Petitioner misrepresented themselves. In other words, we withdraw the Director's finding not because we find there was *not* willful misrepresentation, but because the record as it currently exists is not sufficiently developed to support it. The Petitioner should be prepared to address the veracity of their representations in this or any future immigration proceedings.

I. LAW

Whilst neither the statute nor the pertinent regulations define the term “national interest,” we set forth a three-prong analytical framework for adjudicating national interest waiver petitions in *Dhanasar*. *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

The Petitioner accompanied their national interest waiver petition with a copy of their master’s degree in theology with addendum, an identity document issued by the Ukrainian Orthodox Church of the USA identifying the Petitioner as a priest until October 31, 2021, publicly available information about the Ukrainian Orthodox Church of the USA, their resume, and several letters and certificates corresponding to the Petitioner’s services and qualifications as a priest. The Director issued a request for additional evidence (RFE) so that the Petitioner could supplement the record with any documentation or information to demonstrate their eligibility under the *Dhanasar* analytical framework. The Petitioner submitted an expert opinion from [REDACTED] professor of sociology at the University [REDACTED] a personal statement, an educational evaluation, and several

reference letters in support in response to the RFE in hopes of demonstrating their eligibility under the *Dhanasar* analytical framework.

The record as presently constituted supports the Petitioner's categorization as an advanced degree professional for EB-2 classification. And an endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The Director concluded that the Petitioner's endeavor was substantially meritorious, and the record supports that conclusion. So the sole issue to be addressed is whether the Petitioner has established that a waiver of the job offer requirement, and thus of the labor certification, would be in the national interest. For the reasons discussed below we conclude that the Petitioner has not sufficiently demonstrated the national importance of their proposed endeavor.

The Petitioner endeavors to serve as a priest. The Petitioner's personal statement submitted in response to the RFE elaborated on their endeavor and indicated that they intended to continue to serve as a priest at the Ukrainian Orthodox Church of [REDACTED] Connecticut. The Petitioner proposed to endeavor to provide the church community with "ongoing spiritual care" by offering "emotional and spiritual support" ostensibly rooted in the Ukrainian Orthodox Church of which they represented themselves to be clergy.²

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. 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.

The evidence in the record does not support this endeavor's national importance. The record does not sufficiently describe how ministering to the spiritual needs of Ukrainian Orthodox Church of the USA adherents in Connecticut would have broader national or global implications rising to a level of national importance.³ And the record does not demonstrate any prospective substantial positive economic effects from the proposed endeavor for the United States or in the United States interest.

A good portion of the arguments the Petitioner makes in support of their proposed endeavor stem from the effect of the Ukrainian invasion crisis. The Petitioner filed their petition on January 25, 2021. The

² We focus on the proposed endeavor when analyzing eligibility under *Dhanasar*'s first prong. *Dhanasar* at 889. And because we have concluded that the Petitioner's proposed endeavor does not rise to a level of national importance, the validity of the Petitioner's status as a priest of the Ukrainian Orthodox Church of the USA is not pertinent. Their status as an authorized priest is germane to an analysis of their ability to advance their proposed endeavor under the second prong of the *Dhanasar* analytical framework to which we are not required to provide a conclusion at this time. 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").

³ Much of the documentation the Petitioner has submitted focuses on their individual accomplishments and expertise when attesting to the national importance and substantial merit of the proposed endeavor. It is important to note that the Petitioner's accomplishments and expertise are more relevant to the second prong of *Dhanasar*, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar* at 889.

Ukrainian invasion crisis did not commence until February 24, 2022, nearly 13 months later. As there was no advance warning or expectation for the elapsed period of 13 months between when the Petitioner filed their petition and when the Ukrainian invasion crisis commenced, the need for the Petitioner's endeavor to help wounded Ukrainian soldiers and war refugees could not have been anticipated. So we view the Petitioner's expression of their proposed endeavor's contours in their response to the RFE with a considerable degree of skepticism. A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc Comm'r 1998). Questions of credibility can severely undermine the assertions contained in a petition and the reliability of the evidence submitted in support. *See Matter of Ho*, 19 I&N Dec. 582 at 591 ("Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition"). Moreover, the Petitioner has not provided sufficient evidence of the effect of the Ukrainian invasion crisis on their congregation. And the evidence does not describe the existence of any Ukrainian war refugees or soldiers seeking the Petitioner's services through their endeavor. And even if there were such individuals or could be in the future, the evidence does not describe how tending to the spiritual needs of wounded Ukrainian soldiers and refugees could rise to a level of national importance any more than tending to the religious needs of other members of the laity.

The expert opinion submitted by the Petitioner does not illuminate how the Petitioner's proposed endeavor rises to a level of national importance. USCIS may, in its discretion, use as advisory opinion statement from universities, professional organization, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, the submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* Moreover, when letters are submitted to support the merits of an entrepreneur's business, business plan, product or technology, the letters should be from relevant third-party reviewers such as prospective investors, retailers, or other industry experts. The expert opinion's author is a professor of sociology, which does not appear related to the Petitioner's theological, religious, or spiritual field of endeavor. The writer's areas of academic interest are sociology, criminology, deviance, gender, and sexualities. They noted their "expertise in assessment of dossiers for full professor promotions" and services as a "diversity consultant." But it is unclear from the record how this qualified them to render an opinion on the national importance of the Petitioner's proposed endeavor to minister to the spiritual needs of the Ukrainian Orthodox Church of the USA's adherents in [redacted] Connecticut. The writer's letter identified several diverse areas that the Petitioner's endeavor could potentially benefit, including addressing a clergy shortage,⁴ improving mental health, "substantial positive economic effects," COVID-19 recovery, reducing systemic racism, increasing upward opportunity and mobility for vulnerable communities, advancing international development and global humanitarian work, strengthening pluralism and respecting constitutional guarantees, benefitting childhood education, promoting health, and stabilizing family relationships.

⁴ The national interest waiver is not designed to address labor shortages. Moreover, a streamlined process allows non-profit religious organizations, or their affiliates, to employ noncitizens as ministers, in religious vocations, or in other religious occupations in the United States in the employment based fourth preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4). The impracticality of other immigration options designed to address labor shortages, like the labor certification process, are evaluated under the third prong of the *Dhanasar* analytical framework.

In essence, the writer attempted to draw a correlation between the beneficial influences of spirituality on a wide swath of important issues and scourges for humanity, such as improved mental health and reduced racism. But the wide-ranging potential “benefits” identified by the writer diluted the Petitioner’s proposed endeavor because they did not correlate to the Petitioner’s proposed endeavor to minister to the spiritual needs of Ukrainian Orthodox Church of the USA adherents in [redacted] Connecticut rooted in the Ukrainian Orthodox religion followed by the Petitioner.

At the outset, the writer spoke of religion and spirituality interchangeably when they are not. The writer’s own cited source material published in *Frontiers in Psychology* distinguishes spirituality “as a more general, unstructured, personalized, and naturally occurring phenomenon, where a person seeks closeness and/or connectedness between him/herself and a higher power or purpose.” But the religion within which the Petitioner’s proposed endeavor is rooted and is intrinsically tied, Ukrainian Orthodox Christianity, is not “general, unstructured, personalized and naturally occurring.” It is a specific, structured, rules-driven, and well-developed construct.

For example, the writer discussed the importance of spiritual work and its benefits to mental health. But the record was devoid of any evidence showing how the improvement of mental health in a discrete population such as Ukrainian war refugees and wounded Ukrainian soldiers amongst the common Ukrainian laity in [redacted] Connecticut rooted in spirituality implicated broader issues and concerns rising to a level of national importance. In fact, the writer only spoke of the link between spirituality and mental health in general terms. The writer’s assertions sourced in a summary study exploring the link between spirituality and mental health and well-being provided no meaningful analysis of the broader implications or the potential prospective economic impact of the proposed endeavor rising to the level of national importance.

And when the writer did write about religion, they opined about religion’s influence on education, health, family relationships in the abstract and general. They named no specific religion, or any specific religious work, that correlated to the specific work the Petitioner endeavored to accomplish. The writer’s analysis was ineffective as a result. The writer’s opinion did not demonstrate the broader implications of the Petitioner’s priestly work and how their specific religious work, not just religion in general, influenced education, health, and family relationship on a level of national importance.

And the “substantial positive economic effects” the writer sought to attribute to the Petitioner’s proposed endeavor were indistinct. The writer appeared to characterize the various religious groups in the United States which could be housed in churches, synagogues, mosques, temples, and chapels (ostensibly corresponding to faiths such as Christianity, Judaism, Islam, etc.) as a loosely connected group influencing the economy by patronizing retail establishments, establishing educational institutions, and promoting religious dietary restrictions so that restaurants make food items that comply available at their establishments. In the first instance, the record does not sufficiently support the specific connection between religious people and economic activity. Even irreligious people would buy goods and services (retail), go to elementary, secondary, and higher educational institutions (education), and adhere to dietary restrictions (gluten free, lacto/ovo vegetarianism, keto) when they go to eating establishments. Moreover, the writer has not explained in their opinion how religious people who engaged in financial transactions to avail themselves of these day to day needs substantially provided greater positive economic effects than when the irreligious laity engaged in the

same activities. The record did not reflect how the economic activities of religious people would have prompted job growth anywhere let alone in economically distressed areas. But the key deficiency in the writer's statements is that it neglected to analyze the Petitioner's proposed endeavor's impact. The Petitioner's endeavor, such that it is, is not a multi-faith enterprise. It is a plan to function as a priest in the Ukrainian Orthodox Church of the USA and tend to their congregation. The record does not contain sufficient evidence reflecting a substantial positive economic effect stemming from the Petitioner's specific endeavor and how it rose to a level of national importance.

And the writer devotes a section of their opinion to summarizing a White House initiative to partner with faith-based and neighborhood organizations to address pandemic recovery, address economic recovery, fight racism, increase opportunities of the underrepresented and disadvantaged, advance pluralism, advance international development and global humanitarian work, and respect constitutional guarantees. The existence of the White House initiative bestows no benefit or demerit to the Petitioner's proposed endeavor. This White House initiative is the White House's endeavor, not the Petitioner's. There is no evidence in the record which connects the Petitioner's endeavor to the White House initiative. The Petitioner is not involved with the White House initiative. The White House initiative is secular; it is not limited to any one religion. And the aim of the White House initiative is not correspondent to the Petitioner's goal to minister to the spiritual needs of Ukrainian Orthodox Church of the USA adherents in [REDACTED], Connecticut.

As the record does not support the broader implications of the Petitioner's endeavor or any positive economic effects rising to a level of national importance, we can only conclude that they have not demonstrated eligibility for a national interest waiver under the first prong of the *Dhanasar* framework.

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 eligibility under the remaining prongs of the *Dhanasar* analytical framework. *See INS v Bagamasbad*, 429 U.S. at 25 and *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. So we dismiss the Petitioner's appeal.

ORDER: The appeal is dismissed.