



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

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

In Re: 23782181

Date: JUL. 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a surgeon, seeks classification as a member of the professions holding an advanced degree. 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. 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.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the job offer requirement is 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 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

¹ *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).

- 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

The Director did not make a finding as to whether the Petitioner qualifies for the underlying EB-2 classification. Rather, the Director analyzed only the Petitioner's eligibility for a national interest waiver. The Director found that the Petitioner established the substantial merit of his proposed endeavor and that he is well-positioned to advance it, but that the Petitioner had not established the national importance of the endeavor nor that, on balance, waiving the job offer requirement would benefit the United States.

The record contains evidence that the Petitioner obtained a title of physician (*titulo de medico*) degree from the *Universidade do Sul de Santa Catarina* in Brazil in 2005 and completed a general surgery residency in 2008 and a head and neck surgery residency in 2010, both in Brazil. The record also contains evidence of the Petitioner's license to practice medicine in Brazil and his work experience as a surgeon in Brazil for approximately 11 years.² Because the Director's decision and the Petitioner's appeal do not address whether the Petitioner established eligibility for the EB-2 classification as of the priority date, we reserve on this question and examine below whether the Petitioner has established eligibility under 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").

The Petitioner states in his initially filing that his proposed endeavor is to work as a surgeon. The Petitioner states that through this endeavor he will be "helping U.S. health providers, medical institutions and U.S. hospitals improve medical procedures, and dealing with complex medical procedures." The Petitioner did not specify a type of surgery or specialization that he would pursue. In response to the Director's notice of intent to deny (NOID), which requested additional documentation to establish all three prongs of the *Dhanasar* analytical framework, the Petitioner further stated as to his proposed endeavor that he intended to accept a job offer from the [REDACTED] Clinic Foundation in [REDACTED] Ohio as a clinical associate surgeon in the Department of Endocrine Surgery.

As to the first prong of the *Dhanasar* analytical framework, as stated above the Director found that the Petitioner established the substantial merit of his proposed endeavor but not its national importance. Specifically, the Director found that the Petitioner did not establish that his proposed endeavor would have broader implications in the medical field. The Director concluded that the impact of the Petitioner's proposed endeavor would be limited to serving the patients of the hospital or institution where he would be working, and that there was insufficient evidence in the record to demonstrate how the Petitioner's proposed endeavor might extend beyond the organization and its patients to impact the industry or field more broadly. The Director also noted that the Petitioner had

² The Petitioner did not provide evidence to establish that he was licensed to practice medicine in the United States at the time of filing the petition.

not established that the proposed endeavor has the significant potential to employ U.S. workers or otherwise offer substantial positive economic effects that would be commensurate with national importance.

On appeal, the Petitioner asserts that the Director did not apply the proper standard of proof, and instead imposed a stricter standard of review than the preponderance of the evidence. Specifically, the Petitioner claims that the Director did not give due regard to the Petitioner's professional plan, the evidence of his work in the field, his letters of recommendation, and the industry reports and articles submitted. The Petitioner asserts that this evidence establishes by a preponderance of the evidence the proposed endeavor has national importance.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Upon de novo review, we conclude that the evidence of record and that the Petitioner highlights on appeal does not establish by a preponderance of the evidence the national importance of his proposed endeavor. As to the professional plan, the Petitioner asserts in the initially submitted plan that his proposed endeavor has national importance because he will develop treatments to improve health, provide quality patient care, supervise newer healthcare providers, promote public health, and negotiate healthcare costs. But rather than establishing how the Petitioner's specific proposed endeavor has national importance, several of these stated objectives simply describe the typical duties of a surgeon.³ Additionally, other than listing these objectives, the plan does not provide further specific details as to how these objectives would be accomplished and the scope of these objectives. Without more details, the plan does not establish how these objectives would result in a broad impact on the medical field that would be commensurate with national importance. In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889.

In response to the Director's NOID, the Petitioner submitted a revised professional plan in which he states that he will pursue his proposed endeavor by accepting a job offer from the [redacted] Clinic Foundation in [redacted] Ohio as a clinical associate surgeon in the Department of Endocrine Surgery. The Petitioner provided a job offer letter from the [redacted] Clinic Foundation, dated February 4, 2022, which states that it is a "nonbinding letter of intent" for the Petitioner to be appointed as a clinical associate surgeon in the field of endocrine surgery, contingent upon obtaining a visa and Ohio medical license. The Petitioner asserts that this establishes his endeavor's national importance because

³ In determining national importance, the analysis focuses on what the petitioner will be doing rather than the specific occupational classification. For instance, although the petitioner in *Matter of Dhanasar* was an engineer by occupation, the decision discusses his specific proposed endeavor "to engage in research and development relating to air and space propulsion systems, as well as to teach aerospace engineering." *See generally*, 6 USCIS Policy Manual F.5(D)(1), <http://www.uscis.gov/policy-manual>; *see also Matter of Dhanasar*, 26 I&N Dec. at 891.

[redacted] is an economically depressed area, and therefore medically underserved, and because there is a national shortage of endocrine surgeons in the United States. The record does contain articles and reports related to the shortage of physicians and the lack of access to healthcare in the United States, but the Petitioner's professional plan does not credibly explain how his efforts as an individual surgeon will impact these issues on a scale that rises to the level of national importance.⁴ We also note that the Petitioner must establish eligibility at the time of filing the petition. 8 C.F.R. § 103.2(b)(12). The petition was filed in November 2019 and the job offer letter from the [redacted] Clinic, dated February 2022, was received over two years after the filing. Although the job offer letter is dated after the filing of the petition, we will consider the letter inasmuch as it demonstrates ongoing evidence of the Petitioner's pursuit of his endeavor to work as a surgeon. However, we will not consider the specifics of the location and the specialty of the [redacted] Clinic job opportunity as part of the Petitioner's proposed endeavor, because those are circumstances that arose after the filing of the petition, and as such, cannot be used to establish eligibility. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). We consider the Petitioner's proposed endeavor as he initially described it, which is to work as a surgeon. But we conclude that the attempt to add the specialty of endocrine surgery and the specific geographic area of [redacted] as part of the proposed endeavor is an attempt to change the proposed endeavor after the filing.⁵ Therefore, we will consider whether the proposed endeavor has national importance based on how it was initially claimed at the time of filing.⁶

We also conclude that the evidence in the record relating to the Petitioner's work in the field does not establish the national importance of the proposed endeavor. The record does contain evidence to help show that the Petitioner is an experienced head and neck surgeon in Brazil, including the Petitioner's educational documents, work experience letters, evidence of membership in professional associations, and evidence of attending conferences for continuing medical education credits in Brazil. However, this evidence of the Petitioner's education, skills, and knowledge generally relates to the second prong of the *Dhanasar* analytical framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether he is well-positioned to advance it. *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the Petitioner's specific proposed endeavor – to be employed as a surgeon – has national importance under *Matter of Dhanasar*'s first prong. The evidence of the Petitioner's work in the field does not elaborate on the Petitioner's specific proposed endeavor nor its national importance.

Similarly, the letters of recommendation that the Petitioner highlights on appeal do not establish the national importance of the proposed endeavor. The Petitioner submitted six letters of support, written

⁴ The job offer letter itself also does not provide specific details that would help establish that this position is nationally important, nor describe the scale of the impact that this position would have on the problems of lack of access to healthcare and physician shortage in the United States.

⁵ A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See id.* at 176.

⁶ Even if we were to consider the geographic location of [redacted] and the endocrine specialty as part of the Petitioner's proposed endeavor, we would conclude that the Petitioner had not established the endeavor's national importance. The fact of a shortage of U.S. workers in an occupation, such as endocrine surgeons, is not evidence of a related specific endeavor's national importance. As noted above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work, but rather the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. Moreover, the Petitioner still has not demonstrated that his efforts as an individual surgeon would address the problem of lack of access to medical care on a scale commensurate with national importance.

by professional associates, mentors, or supervisors. The letters speak highly of the Petitioner as a skilled surgeon with a high level of technical expertise who competently handles complex cases. For example, one of the letter writers, the chief surgeon at a hospital in Brazil where the Petitioner was previously employed, states that the Petitioner was the first surgeon in their region of Brazil to successfully perform a specific complex surgical procedure. Again, this evidence generally relates to the second prong of the *Dhanasar* framework and whether the petitioner is well-positioned to advance the proposed endeavor. *Id.* Overall, these letters of recommendation do not describe how the proposed endeavor of working as a surgeon has the potential to result in a broad impact that would be commensurate with national importance. By contrast, the petitioner in *Matter of Dhanasar* submitted expert letters from individuals holding senior positions in academia, government, and industry that described the national importance of the petitioner's specific area of research. *Id.* at 893. Another of the letters, submitted in response to the Director's NOID and written by a surgeon at the [REDACTED] Clinic, describes the research projects that the Petitioner has been involved with since being employed by the [REDACTED] Clinic as a clinical research fellow in endocrine surgery. Again, this employment, and the related research projects, appear to have arisen after the filing of the petition, and as such do not help establish the national importance of his proposed endeavor and eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12). Moreover, the record does not contain other evidence related to this research, the Petitioner does not mention conducting research as part of his proposed endeavor, either in the initial filing or in response to the NOID, and the record does not demonstrate that his proposed endeavor involves research. Therefore, we conclude that the letter does not help establish the national importance of the Petitioner's proposed endeavor of working as a surgeon.

Finally, as the Petitioner notes on appeal, the record contains several articles and industry reports which the Petitioner claims help establish the proposed endeavor's national importance. As mentioned above, the record contains articles and reports on the lack of access to healthcare in the rural United States and the shortage in the United States of physicians and healthcare workers in general. The record also contains articles on visa restrictions related to the coronavirus pandemic for foreign doctors, a medical journal article on chronic pain, articles and studies on the high cost of healthcare in the United States, and the O*NET Online Summary Report and the Occupational Outlook Handbook information for the occupation of "physicians and surgeons, all other." However, this evidence relates to the medical field and surgery profession overall. The articles and reports do not discuss the Petitioner nor his proposed endeavor of working as a surgeon and do not support the endeavor's national importance. The Petitioner does not provide evidence that would support the conclusion that the Petitioner's proposed endeavor would lessen the shortage of physicians, decrease the cost of healthcare, or increase access to healthcare in rural communities on a scale rising to the level of national importance. The Petitioner bears the burden of proof to establish eligibility for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 375-76. The Petitioner must submit "relevant, probative, and credible evidence" to establish the national importance of his proposed endeavor, and we conclude that the Petitioner has not met his burden of proof to establish this claim with his unsupported assertions alone. *Id.* at 376.

Finally, we note that counsel for the Petitioner makes numerous assertions on appeal that the proposed endeavor has national importance. Counsel asserts that the Petitioner has established the endeavor's national importance because it "will have broader implications within his field, due to the ripple effects of his professional activities" and "will impact more than just his served companies/hospitals, and instead has the potential to reach the patients, families, and affiliates of said patients, based on his

guidance and practices” Counsel also contends that the proposed endeavor “offers invaluable solutions to U.S. medical clinics and to medical health professionals at large, given the country’s appalling health state, exacerbated by an intensive, and rising, shortage of industry professionals.” Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel’s statements must be substantiated in the record with independent evidence. Counsel’s assertions here are not sufficiently supported by evidence in the record.

Although the record reflects the Petitioner’s experience as a surgeon in Brazil and his intention to provide high quality care to his patients, the Petitioner has not offered sufficient information or evidence to demonstrate that the prospective impact of his 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 extend beyond his students to impact his field more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his hospital and its patients to impact the medical field at a level commensurate with national importance.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We acknowledge the Petitioner’s arguments on appeal as to the third prong of *Dhanasar* but, having found that the evidence does not establish the Petitioner’s eligibility under the first prong, we will not address those arguments here. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong, as well as whether the Petitioner has established eligibility for EB-2 classification. See *INS v. Bagamasbad*, 429 U.S. at 25 (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”).

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.