



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

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

In Re: 26964319

Date: JUL. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a medical services provider, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *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.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for a national interest waiver. 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.

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.” *Id.* 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 USCIS may, as 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.²

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined on appeal 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.

The Petitioner endeavors to become an entrepreneur in order to further the use of cannabidiol, or CBD, in the field of healthcare. The Petitioner intends to use her experience as a doctor in Colombia and her employment experience in the United States to develop a business through which she will offer consultancy services related to the use of CBD for therapeutic purposes. The Petitioner initially stated that she “will contribute to the U.S. Healthcare System and Patient care through training American healthcare personnel in therapeutic CBD application, and management of resources in emergency situations such as hurricanes and pandemics.”

In response to a request for evidence (RFE) wherein the Director expressed concerns related to the legality of CBD as it would relate to the purported merit of her endeavor, the Petitioner submitted evidence to clarify that the use of CBD and its extraction from hemp is not illegal in the United States. The Director subsequently determined that the Petitioner’s proposed endeavor has substantial merit. However, the Director concluded that the record did not establish that the endeavor is of national importance. On appeal, the Petitioner submits a brief in which she asserts that the evidence of record establishes her eligibility for a national interest waiver and that the Director did not analyze each piece of evidence. Discussing the Director’s conclusion that the evidence did not demonstrate the national importance of her proposed endeavor under the first prong of the *Dhanasar* framework, the Petitioner states the following:

Much like in *Buletini*,³ the Request and Denial clearly did not contemplate or discuss the totality of the evidence submitted for proving the national importance of the Petitioner’s proposed endeavor. As such, USCIS’ determination that the Petitioner did not meet the requirements of this prong by a preponderance of the evidence is flawed amounting to an abuse of discretion on the part of the adjudicator. As the AAO may assess, ample evidence was provided that clearly and unambiguously speaks to the national importance of the Petitioner’s proposed endeavor and the prospective national impact it holds for the nation from a social welfare standpoint.

For the reasons provided below, we conclude that the Petitioner has not demonstrated the national importance of the proposed endeavor under the first prong of the *Dhanasar* analytical framework.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ See *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994) (stating that failure to consider all of the relevant evidence submitted by a plaintiff constitutes an abuse of discretion).

The first prong, 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

In response to the RFE, the Petitioner provided the following in a personal statement (quoted as written):

As a doctor...I share important information on alternative therapies for conditions such as anxiety, depression, post traumatic stress, among others, based on CBD and educating the general population on health related issues.....I plan to use my networking and interactions with Medical Associates to enhance research on cannabis or cannabinoids for other conditions in [their] early stages (Alzheimers, Epilepsy, Parkinsons, PTSD, Anxiety, Depression, cancer, etc.).... With my personal experience and applying first-hand dealing with catastrophic situations, such as extraneous flooding, landslides, earthquakes, and other natural disasters, I would be an essential asset to the healthcare industry in any time of crisis.

The Petitioner also provided a "Proposed Endeavor Statement" that provides, in part:

My proposed endeavor is to build on my extensive experience in the medical field with education and consultation on the therapeutic benefits of CBD. I plan to further engage in researching The Endocannabinoid System (TES) and its biological effects throughout our central and peripheral nervous system. I feel that it is imperative that I educate, develop, and employ medical professionals and benefit patients with the science of CBD to further de-stigmatize the plant that has been used for thousands of years as medicine.... I plan to educate, consult and develop the analytics on...TES...and CBD.... I look forward to continuing the research and developing models for medical professionals pertaining to the therapeutic and medicinal benefits of CBD....

We note that, although mentioned in her personal statement, the Petitioner's statement declaring her proposed endeavor does not include discussion of an intention to incorporate the management of resources during natural disasters into that endeavor; therefore, it appears that the Petitioner's proposed endeavor is to do work related to the use of therapeutic CBD. The petitioner's description of that work, however, is ambiguous; for example, her intention to develop "analytics" and "models for medical professionals" is not accompanied by any explanation of what those developments would look like in terms of work products that would translate to treatment systems for wide utilization in the medical field.

In discussing how the evidence of record did not demonstrate the potential prospective impact of the proposed endeavor, the Director's decision cites the lack of "a detailed business plan or model for [the Petitioner's] proposed consulting services." On appeal, the Petitioner contends that this type of documentation involves an assessment not of the proposed endeavor, but of the "proposed

employment,” and that as a “model or plan for future activities,” according to *Dhanasar*, it should be considered under the second prong. We disagree. While a business plan or similar documentation may be relevant in evaluating eligibility under the second prong, its presence—or lack thereof—may be probative in the assessment of a proposed endeavor’s national importance; realistic entrepreneurial endeavors are, by nature, grounded in a plan for what the entrepreneur’s intent will actually entail. The impact of a venture cannot be evaluated without, for example, information concerning how it will be funded, where the business will operate, the Petitioner’s specific job duties, or a set of definitive goals for the venture. Here, the Petitioner has provided generalized descriptions of her intent to improve healthcare through providing education in the use of CBD therapeutics. As another example of the lack of detail in the Petitioner’s statements regarding her future intent, she indicates that she currently works in underserved areas in Florida, but she does not sufficiently explain whether or how she will continue to work in underserved areas as a consultant to medical professionals. The Petitioner has not included sufficient documentation that defines her particular proposed endeavor in a manner that would demonstrate, by a preponderance of the evidence, its national importance.

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 “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. Further, to evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of his work. 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.

The Petitioner has provided reports, research papers, and studies related to CBD in healthcare and issues of medical care shortages. Although related to the field in which the Petitioner intends to work, this documentation does not clarify or establish the importance of the Petitioner’s individual endeavor as a consultant. And while, in her brief, the Petitioner points to documentation showing that CBD research has a role in national healthcare initiatives, she has not sufficiently documented the relationship between her proposed endeavor and those initiatives. It is not clear from the evidence how the Petitioner’s proposed work as a consultant would impact the field of healthcare, or any subcategory within the field, at a national level.

The Petitioner also indicates that letters of support included in the record, alongside the healthcare documentation, serve as evidence of the endeavor’s economic benefits to the nation. The brief states:

The Petitioner’s endeavor in the instant case holds much greater national importance from a social welfare standpoint, as was clearly argued and supported by objective evidence throughout the record. While the economic benefits of the Petitioner’s proposed endeavor may be secondary, the primary benefits lie in the improvements to the overall social fabric of the nation in reducing the impact of opioids and reliance upon them for traditional pain relieve therapeutic treatments.

The letters of support largely discuss the Petitioner's experience and qualifications to continue work in healthcare, emphasizing, for example, that she "will add substantial contribution[s] to the development of healthcare in the United States" and "will serve the national interest." These letters do not expound on the Petitioner's endeavor itself or provide probative evidence of how her individual consultancy business will have a positive and significant impact regionally or nationally. Although the Petitioner may assert that she has fully articulated her endeavor and that its economic and social impact will rise to the level of national importance, her unsupported statements are insufficient to meet her burden of proof. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has not demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The record does not establish the national importance of the 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. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *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).

III. CONCLUSION

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.