



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

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

In Re: 28962733

Date: JAN. 3, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of speech therapy and at home healthcare services, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 establishes the Petitioner qualifies for the underlying classification as an advanced degree professional, but that she 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 petitioner must first demonstrate eligibility 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.<sup>1</sup> 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

If a petitioner demonstrates eligibility for the underlying 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

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<sup>1</sup> Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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 Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, 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

The Director determined that the Petitioner is a member of the professions holding an advanced degree.<sup>3</sup> The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner’s proposed endeavor is to “create a new concept of primary care medicine; it will serve as an at home services company, providing services and treatments for patients of all ages.” The Petitioner argues that her proposed endeavor is of national importance because of the increased demand for healthcare services and the shortage of healthcare workers, particularly in light of the COVID-19 pandemic. She intends to provide health care services to those in need, while also providing preventative healthcare services. The business’ provision of services will be “general physician services, psychology services, physiotherapy services, occupational therapy services, nutritional services, and speech language and pathology services.” Initially, the Petitioner does not plan to provide speech pathology or therapy services herself, but instead, she will serve in a managerial capacity, and ensure the hiring of licensed professionals to meet the needs of U.S. citizens seeking at home healthcare services.

The Director concluded that although the Petitioner established the substantial merit of her proposed endeavor, she had not demonstrated its national importance. Citing to our decision in *Dhanasar*, the Director determined that the Petitioner’s proposed endeavor was not of national importance because the evidence did not demonstrate that it would: have broader implications on a national or global scale within her field; have significant potential to employ U.S. workers; have substantial positive economic effects, particularly in an economically depressed area; or broadly enhance societal welfare or cultural or artistic enrichment.

On appeal, the Petitioner asserts that in denying the petition, the Director “imposed novel substantive and evidentiary requirements beyond those set forth in the regulations.” However, the Petitioner does not point to specific examples of this within the Director’s request for evidence and denial. The Petitioner further alleges that the Director “did not apply the proper standard of proof in this case, instead imposing a stricter standard . . . to the detriment of the appellant.” Except where a different standard is specified by law, the “preponderance of the evidence” is the standard of proof governing

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<sup>2</sup> 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).

<sup>3</sup> The Petitioner provided a credentials evaluation report prepared by World Education Services (WES), dated October 2020, which concludes that she holds the U.S. equivalent of a “[b]achelor’s degree from, and two years of graduate study at, a regionally accredited institution.”

immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375-76; *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the “preponderance of the evidence” is the standard of proof governing national interest waiver petitions. *See generally* 1 *USCIS Policy Manual*, E.4(B), <https://www.uscis.gov/policymanual> (describing the standards of proof used in administrative immigration proceedings). While the Petitioner asserts that she has provided evidence sufficient to demonstrate her eligibility for a national interest waiver, she does not further explain or identify a specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

As evidence of her proposed endeavor’s national importance, the Petitioner submitted a business plan, two personal statements (“Definitive Statement” dated August 16, 2021 and November 23, 2022), and industry reports and articles. In her personal statements, she outlines her years of work experience in Brazil providing speech therapy services in a home care setting. She also explains how her “expertise in clinical leadership” will “aid in improving [her business’s] operational capacities.” Regarding the Petitioner’s reliance on her past work experience, credentials, and past accomplishments as a speech language pathologist and therapist, such expertise would be relevant to our analysis under the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of her proposed work.

In *Dhanasar*, we 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.* at 889. 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. While the Petitioner asserts that “the impact . . . can extend beyond the organization and its clients” because it “has the potential to contribute to the advancement of Home Health Care and Speech Therapy as a whole [] [b]y introducing innovative approaches, techniques, and business models,” she has not sufficiently explained what those innovations are. The Petitioner has not demonstrated the broader implications of her endeavor, or that her work would impact her field, as opposed to the clinic’s patients, more broadly to demonstrate its national importance. Although we acknowledge that her endeavor, if carried out as described, may provide her customers with improved healthcare outcomes, it is unclear how this would prospectively impact the field in a broader sense. For all these reasons, she has not documented that the particular work she proposes to undertake offers original innovations that contribute to advancements in home healthcare or speech therapy or otherwise has broader implications for her field.

We are also not persuaded by the Petitioner’s arguments that the proposed endeavor has national importance due to the shortage of professionals in her field. First, the Petitioner has not established that her proposed endeavor would sufficiently impact or significantly reduce the claimed national shortage. Second, the U.S. Department of Labor directly addresses labor shortages through the labor certification process. Therefore, a shortage of healthcare workers is insufficient, by itself, to establish the national importance of her endeavor.

In her 75-page business plan, she explains her proposed endeavor, and describes the national importance of her endeavor to be investments, creation of jobs, and tax contributions through payroll

and income generation. Her business plan details her position as CEO of her company and her husband's position as owner/partner and administrative and financial manager. Her plan notes that as an initial investment, the Petitioner will use \$60,000 from her personal funds and the remaining funding will come from company profits, which will grow over time and eventually total \$1,313,910 in the first five years of operation. The provided organizational chart shows the proposed expansion of the company as well as the job duties associated with each position. Her proposed endeavor intends to create the following positions: CEO/Technical Director; an Administrative and Financial Team; a Marketing and Sales Team; Physician (Generalist and Specialist); Nurse; Speech Therapist; Nutritionist; Physiotherapist; Occupational Therapist; Psychologist; Social Worker; Driver; Customer Service Team; Human Resources Team; and Legal Team. Within the first five years of operations, her goal is to self-finance her business, and to hire American workers to fill vacancies. She projects that total revenue will be \$4,869,375 by the fifth year of operation, and net income will be \$1,210,836.41 during that same period of time. Furthermore, she projects that her endeavor will result in 45 direct and indirect hires, generating income and boosting the local economy.

The Petitioner has not, however, provided any support or basis for the above projections. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Not only are her assertions related to job creation, increased tax revenue, financial investments, and her endeavor's overall prospective economic impact not sufficiently supported, but the record does not show that such claimed benefits to the U.S. regional or national economy resulting from her endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Dhanasar*, 26 I&N Dec. at 890.

We also acknowledge the Petitioner's voluminous reports on the importance of speech therapy, the role of speech therapists in healthcare, how speech therapists have played and will continue to play a vital role in the COVID-19 frontline related to swallowing disorders and for those placed on ventilators, as well as how children and their families benefit from speech therapy, and the healthcare worker crisis post-COVID pandemic, as well as those discussing the challenges of the U.S.'s healthcare and social assistance systems. We further acknowledge the industry reports and articles provided that discuss the importance of immigrant-owned businesses because they employ millions of Americans, and how immigrants contribute to our economy. However, these articles do not discuss the Petitioner's specific proposed endeavor or how her endeavor will be of national importance or address these issues. Moreover, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work, but "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

Because the record does not sufficiently establish the national importance of her proposed endeavor as required by the first prong of *Dhanasar's* analytical framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility under the second and third prongs of *Dhanasar's* analytical 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 the applicant did not otherwise meet their burden of proof).

### III. CONCLUSION

As the record does not establish that the Petitioner has met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner is not eligible for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.