



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

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

In Re: 28792393

Date: JAN. 05, 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 nursing and home health care, seeks a second preference immigrant classification as an advanced degree professional, 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 did not establish that the Petitioner's proposed endeavor had national importance and that, on balance, it was not in the interest of the United States to waive the job offer requirement. 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 demonstrate 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." Section 203(b)(2)(B)(i) of the Act. 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 U.S. Citizenship and Immigration Services (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.

II. ANALYSIS

A. EB-2 Classification

The Director did not include a determination of the Petitioner's eligibility for the EB-2 classification in her decision.² However, as the record does not establish by a preponderance of the evidence that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.³

B. National Interest Waiver

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* at 889.

1. Substantial Merit

The Petitioner is an entrepreneur in the nursing field that proposes to operate her company, "[redacted]" to provide "nursing home care and assisted housing services to elderly patients." She includes industry reports and articles about the field of home health care and certain health issues the elderly in the United States are facing. This includes industry reports and articles on chronic disease management, chronic pain, heart disease, dementia (including Alzheimer's disease), chronic kidney disease, and the long-term effects of COVID-19. We conclude that the Petitioner's proposed endeavor has substantial merit.

2. National Importance

On appeal, the Petitioner states that the Director has mistaken the facts of this case, misinterpreted the law, and used this misinterpretation for the basis of their denial. However, she does not point to specific examples of this or offer detailed analysis explaining the particular ways in which the Director has mistaken the facts of this case, misinterpreted the law, and used this misinterpretation for the basis of their denial. Upon de novo review, we agree with the Director that the Petitioner's proposed endeavor does not meet the *Dhanasar* standard for national importance.

² The Director stated in the request for evidence (RFE), "[T]he evidence in the record establishes that the petitioner is a professional holding an advanced degree." However, she did not include an analysis of the evidence in the record to determine how she came to this conclusion.

³ 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).

The Petitioner states that her proposed endeavor will have broad implications through her plan to franchise her company nationwide and create options for telemedicine. In *Dhanasar*, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Dhanasar* at 893. Expanding the Petitioner's company through franchising and offering options for telemedicine would increase her number of clients and broaden the geographical boundaries of her business. However, the record does not show how expanding her endeavor through franchising and telemedicine will have an impact that extends beyond her clients to the broader field of nursing or home healthcare. The Petitioner states that the proposed endeavor, "[r]ises to a level of national importance due to the impact it will have in the long-term positive trajectory of assisted living standards through her business." However, there is no additional evidence in the record to show how her proposed endeavor will impact the broader nursing and home health care industry in this way.

On appeal, the Petitioner asserts that she is committed to research and development of new methods in post-surgery and illness recovery through therapeutic regimens. The business plan devotes a section to "The Research and Development Potential" of her proposed endeavor. Here it states, "[t]he entrepreneur is a researcher & practitioner in the trauma and neuromuscular recovery treatments and intends to use the Institute to research and develop new methods and technologies promoting clinical trials and collecting patient data for future discovery." The business plan then states, "[t]he entrepreneur has extensive experience in the study field. And is also willing to use the company as a research partner, collecting patient data and engaging patients to volunteer to help develop new therapies." There is no additional evidence to establish the Petitioner's experience in research, there are no detailed plans for the research she proposes, and the record does not establish that her proposed endeavor will have national or global implications within the field through the proposed research.

The Petitioner also claims her proposed endeavor has national importance because she is providing home care services to geographically and economically diverse patient populations. While this is meritorious, as discussed above, it does not establish that the proposed endeavor will impact the home care industry in a broader sense, impacting more than just the Petitioner's client base. In addition, the Petitioner states she will be providing services to underserved and disadvantaged populations. However, the record speaks generally about underserved areas stating that some suburbs of Florida are considered to be distressed communities because of their social score and that the average annual wage in Florida has typically been below the U.S. average. However, the business plan does not discuss the specific areas within Florida that the proposed endeavor will be serving and does not detail how the proposed endeavor will specifically help those of underserved and disadvantaged populations. Although the proposed endeavor may have positive implications, the record does not show the broader implications to the field of home health care, or the region the Petitioner will be serving.

The record contains industry articles and reports of the importance of nursing and the home care industry in combating some of the prevalent health issues in the United States. However, 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." *Dhanasar* at 889. Here, the Petitioner improperly relies upon the importance of the industry as sufficient to establish the national importance of her proposed endeavor. Without sufficient documentary evidence of the specific proposed endeavor's broader impact in the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

The response to the RFE, states that the proposed endeavor will be nationally important due to the “ripple effects” it will have in addressing an intense shortage of nursing professionals, optimizing American lifestyle and overall health outcomes, and helping educate the next generation of nurses as well as the current professionals in the field. Here, the Petitioner has not established that her proposed endeavor stands to impact or significantly reduce these claimed national shortages. While the Petitioner’s proposed endeavor may create new nursing jobs, the United States does not have a shortage of nursing jobs, but of qualified workers to fill them. The record does not quantify any “ripple effects” that would be directly attributable to her endeavor or elaborate on how the endeavor will cause such effects, beyond operating as a home health care business. While we acknowledge the industry's importance, as stated above, the relevant question when determining whether a proposed endeavor would have national importance is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Id.* Here, the record does not establish that the endeavor's impact will be nationally important.

The record also contains letters of support from various colleagues of the Petitioner, attesting to her extensive experience in the field as well as many certificates obtained in her studies of various areas in the nursing field. This evidence shows the Petitioner’s extensive experience in the field, but does not demonstrate her proposed endeavor’s national importance. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety.

As the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework, 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 Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

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.