



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

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

In Re: 28020666

Date: AUG. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, physician and general surgeon specializing in oncologic breast surgery and treatment, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established 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.

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.” Section 203(b)(2)(B)(i) of the Act.<sup>1</sup> 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

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<sup>1</sup> Section 203(b)(2)(B)(ii) of the Act provides a national interest waiver for certain physicians who agree to work in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs. In addition, the physician must show that a Federal agency or a state department of public health has previously determined that his work in such an area or at such a facility was in the public interest. *Id.* The Petitioner maintains on appeal that she seeks classification pursuant to section 203(b)(2)(B)(i) of the Act.

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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to her proposed endeavor, the Petitioner initially indicated that she intends to work in “the U.S. as a highly-skilled physician with exceptional expertise in General Surgeon – Mastologist.” She further stated that she plans “to serve as General Surgeon in the United States, focusing on alleviating the early stages of breast pathologies.” The Petitioner also indicated that “she will promote patients’ overall well-being, implement techniques in the healthcare setting, and train other professionals to develop their skills.”

In response to the Director’s request for evidence (RFE), the Petitioner reiterated that her proposed endeavor in the United States involves “female oncologic breast surgery and treatment.” The Petitioner’s “Professional Plan” indicated that she intends “to work full-time in a clinical practice” and that her patient care actions will assist in reducing “the barriers that hinder early diagnosis and timely treatment of breast cancer, helping to guarantee a high rate of recovery based on comprehensive care.” Additionally, she asserted that she will “provide health care to American patients as a consultant and trainer of qualified medical personnel while she fulfills her licensing and degree registration process to fully practice at a residency level.” The Petitioner further noted that she is “qualified to teach and train students and professionals” in her field.

The record includes information about breast implant illness, issues patients should consider regarding their breast implants, and health problems associated with breast implants. The record therefore supports the Director’s determination that the Petitioner’s proposed endeavor has substantial merit.

In addition, the Petitioner provided articles discussing Health Professional Shortage Designations, Area of Critical Need Facility Designations, federal shortage designations relating to health care services, Florida physician shortages, recommendations for overcoming the physician shortage in Southwest Florida, and the worsening Florida physician shortage. We are not persuaded by the Petitioner’s claim that her proposed endeavor has national importance due to the shortage of professionals in her field. A shortage of qualified professionals alone does not render the work of an

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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).

individual physician or surgeon nationally important under the *Dhanasar* precedent decision. Here, the Petitioner has not established that her proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Furthermore, the Petitioner provided letters of support from A-V-, N-D-C-F-, R-J-M-D-, L-D-C-, M-I-F-, and R-A-B- who discuss her medical qualifications and experience. The Petitioner's skills, knowledge, and prior work in her field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong. The aforementioned letters do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work as physician and general surgeon specializing in oncologic breast surgery and treatment offers broader implications in her field or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of her proposed endeavor as required in the *Dhanasar* precedent decision.<sup>3</sup> The Director explained that the Petitioner had not demonstrated "the potential prospective impact of [her] continued work as a medical surgeon, or how her work will have broader implications in the field of medicine."

In her appeal brief, the Petitioner argues that she "is a medical expert in the healthcare field having worked as a doctor for over 20 years within the specialty of breast cancer treatment, mastectomy surgery, and breast cancer related surgical procedures." As previously explained, the Petitioner's claims regarding her experience as a physician, medical qualifications, and surgical skills relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner also points to our non-precedent case, *Matter of E-C-H-*, involving a consultant whose proposed work involved improving programs and assisting organizations that provide support and advocacy for U.S. veterans and wounded warriors. She contends that her case is similar to the aforementioned matter because she provided "a detailed professional plan with a professional strategy, progress description, and plan of action." The non-precedent decision referenced by the Petitioner was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Here, the Petitioner has not established that the facts of the instant petition are analogous to those in the non-precedent decision. For example, unlike the

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<sup>3</sup> The Director's decision noted representations in the Petitioner's business plan (provided in response to the RFE) consistent with a request for classification under section 203(b)(2)(B)(ii) of the Act. Regardless, after explaining that the Petitioner had not demonstrated her eligibility pursuant to section 203(b)(2)(B)(ii) of the Act, the Director still considered the Petitioner's documentation under section 203(b)(2)(B)(i) of the Act using the analytical framework set forth in *Dhanasar*.

individual in *Matter of E-C-H*, the Petitioner has not demonstrated that her proposed endeavor offers broader implications in the field.

In addition, the Petitioner contends that her proposed work “will more likely than not create job opportunities within the field” in locations in South Florida. She asserts that her “entrepreneurship is more likely than not to produce substantial and broader economic benefits to the country while focusing in a specific geographic area of the country and while significantly and potentially employing workers and creating economic welfare in a determined area.” In *Dhanasar*, we 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 Petitioner, however, has not offered evidence indicating that her specific undertaking has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner’s medical practice would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner also points to the information she submitted about breast implant illness, issues patients should consider regarding their breast implants, and health problems associated with breast implants. While these articles help show the substantial merit of her proposed endeavor, they are not sufficient to demonstrate its national importance. In determining national importance, the relevant question is not the importance of the field, 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.*

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. While the Petitioner’s proposed surgical, clinical, and teaching duties have substantial merit, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her 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 impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s clinical and instructional work stands to sufficiently extend beyond her future patients and medical trainees to impact academia or the field of oncologic breast surgery more broadly at a level commensurate with national importance. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. *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”); *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

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.