



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

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

In Re: 29224311

Date: DEC. 4, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, describing herself as a business development professional and entrepreneur, seeks 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. The Director concluded the Petitioner qualified as an advanced degree professional, but further determined that she did not demonstrate her eligibility 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.” 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 USCIS may, as matter of discretion¹, 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 Petitioner, a native and citizen of Mongolia, stated in support of the petition that she planned on acting as a marketing manager and entrepreneur, working to establish her proposed company D-Corporate, an “affordable pharmacy store” based in Virginia. The Petitioner explained her proposed company as follows:

D- Corporate will specialize in providing prescription-based compounding medications at low and average costs to people who are sick, old, and belong to economically weaker communities who pay for their prescription medicines on their own. In addition, the pharmacy will offer herbal health supplements, pharmaceutical-grade vitamins, homeopathic medicine, and OTC products.

The Petitioner asserted the business would establish its headquarters, or its first pharmacy, in a qualified HUBZone, stating that this would stimulate the region’s economic growth, generate jobs, and lead to the payment of federal taxes. The Petitioner also indicated in her business plan that she planned to open two additional pharmacies in [REDACTED] MD after the opening of the first store. The Petitioner asserted that the three compounding pharmacies would generate revenue over \$2.7 million and employ approximately 17 full-time, 16 part-time, and 10 contractors by the end of its fifth year of operation. The Petitioner emphasized that entrepreneurship was good for the U.S. economy and that small businesses are healthy for the nation, reducing “dependence on obsolete systems and technologies...where new and improved products support the development of new markets.” Further, the Petitioner stated that her efforts would “contribute to innovative new business practices and economic prosperity; it will also generate American jobs, increase national and international integration and productivity, and enhance revenues for the U.S. economy.”

The Petitioner also provided several support letters from colleagues attesting to her expertise and skills as a professional pharmacist and businesswoman. For instance, one letter from a director of a pharmaceutical company in Mongolia emphasized the Petitioner’s “distinguished achievements” as a “strong indication that she will serve the U.S. national interest” and be an “exemplary person who will make considerable contributions to the U.S.” The Petitioner likewise submitted an expert opinion from an Associate Professor of Pharmacy, [REDACTED] from the University of [REDACTED] stating that the Petitioner’s company will “open a chain of stores that provide cheaper costing medication of high quality to help reduce prices for United States citizens.”

The Director later issued a request for evidence (RFE) concluding the Petitioner had established that her proposed endeavor had substantial merit. However, the Director indicated the Petitioner did not demonstrate that the Petitioner’s proposed endeavor would have national importance. The Director emphasized the submitted support letters addressing the Petitioner’s career accomplishments, which but did not highlight the national importance of the endeavor. The Director also discussed articles and industry reports submitted by the Petitioner and stated that these only provided generalized

information about business and entrepreneurship and did not address how the Petitioner's endeavor would have substantial positive economic effects rising to the level of national importance. In addition, the Director noted the Petitioner's provided business plan, indicating that there was little data to support of her income and employment projections. As such, the Director requested that the Petitioner submit additional evidence to establish the endeavor's potential prospective impact, such as documentation to substantiate how it would have national or global implications in the field, have significant potential to employ U.S. workers or have other substantial economic effects, broadly enhance societal welfare or cultural or artistic enrichment, or impact a matter that a government entity has described as having national importance.

In response, the Petitioner stated that the United States stands to "benefit from [the Petitioner's] significant science and medical knowledge, particularly as she can provide quality advice to U.S. health organizations of all sizes and backgrounds." The Petitioner indicated that her proposed endeavor was of national importance because her professional activities would "generate substantial ripple effects upon key commercial and business activities" in the United States. The Petitioner also explained that the Petitioner's "direct knowledge of the medicine industry will benefit...U.S. companies and individuals that need qualified professionals" and emphasized the impact immigrant entrepreneurs have on the U.S. economy. In addition, the Petitioner stated that she "is able to advise organizations about potential opportunities for business development and sales expansion in the medical field, as well as effective strategies and initiatives."

The Petitioner further pointed to her proposed plans to start "affordable pharmacy stores" in the United States in historically underutilized business zones, indicating that the new business would generate jobs and revenue in the U.S., including "about forty-three (43) part-times and full-time jobs" and "approximately 8.9 million dollars" in the first five years of operation. The Petitioner stated that her ventures would "spur significant foreign direct investment (FDI) opportunities for the country, further contributing to the nation's economy and offering economic relief after the financial strains left by COVID-19." The Petitioner also submitted several articles discussing the impact of immigrant and woman entrepreneurs, as well as entrepreneurs generally, on the U.S. economy, and other articles discussing the shortage of pharmacists in the United States.

As discussed, the Director concluded the Petitioner established that her proposed endeavor had substantial merit and further determined that she was well positioned to advance endeavor. However, the Director concluded that the Petitioner did not establish the national importance of the proposed endeavor. The Director pointed to data submitted from the Petitioner reflecting that the compounding pharmacy industry generated \$9.3 billion in revenue in 2020, and therefore, that her financial and employment projections did not reflect a significant potential to broadly impact this industry and reach the level of substantial economic effect. In addition, the Director determined that the Petitioner did not demonstrate that, on balance, waiving the job offer requirement would benefit the United States.

On appeal, the Petitioner again asserts that her professional activities have national importance "because they generate substantial ripple effects upon key health activities" in the United States, contributing to "a revenue-enhanced business ecosystem, and an enriched, productivity centered-economy." The Petitioner emphasizes her 17 years of experience in the pharmaceutical industry and as an entrepreneur, indicating that her professional record "offers broad implications to the United States' pharmacy industry, specifically through her endeavors within key commercial segments." The

Petitioner again points to her plans to establish an “affordable pharmacy company” and its previously provided financial and employment projections, noting that it would create jobs, economic stability, and income for the U.S. economy. The Petitioner asserts that the United States “would benefit from investing in well-versed pharmacy professionals such as the [Petitioner], who are knowledgeable regarding potentially profitable markets for U.S. organizations in regions that are economically and politically strategic, yet extremely complex.”

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 Matter of 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.

First, on appeal and throughout the record, the Petitioner emphasizes her skills and experience in the pharmaceutical field and as an entrepreneur, for instance, noting that the United States would benefit from investing in “well-versed pharmacy professionals” who are knowledgeable regarding potentially profitable markets. However, the Petitioner’s experience and knowledge in and of itself is not relevant to demonstrating the national importance of her proposed endeavor but is only probative to whether she is well positioned to advance the endeavor under the second prong of *Dhanasar*. *See Matter of Dhanasar*, 26 I&N Dec. 884, 892-93. As noted, the Director concluded that the Petitioner was well positioned to advance her endeavor. Therefore, we do not find the Petitioner’s emphasis on her skills and experience convincing in establishing the national importance of her proposed endeavor.

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. However, the Petitioner submits conflicting assertions as to her proposed endeavor in the United States. While the Petitioner emphasizes an intent to open affordable compounding pharmacy stores, elsewhere she appears to indicate an intention to provide general professional services in the medical and pharmaceutical field. For instance, in response to the RFE, the Petitioner explained that the Petitioner’s “direct knowledge of the medicine industry will benefit...U.S. companies and individuals that need qualified professionals” and that she “is able to advise organizations about potential opportunities for business development and sales expansion in the medical field, as well as effective strategies and initiatives.” Similarly, as noted, the Petitioner emphasizes on appeal her knowledge regarding potentially profitable markets for U.S. organizations. Likewise, the Petitioner submitted several support letters that did not mention her intention to establish compounding pharmacies in the United States, but which all noted her exemplary qualifications in the field, for example in one case, stating that she “would make a wonderful and successful addition to any company.”

Therefore, the Petitioner’s assertions throughout the record appear to both indicate an intent to open a chain of compounding pharmacies through her own company, and also a proposed endeavor to continue her career as a pharmacist with other companies in the United States. These conflicting

statements leave uncertainty as to the Petitioner's actual proposed endeavor, and in turn, the potential prospective impact of her endeavors on a national scale. The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As noted by the Director, the Petitioner also submitted vague business plans that do not sufficiently establish its proposed financial and hiring projections. For instance, the basis of the Petitioner's proposed business plan was to build "affordable" pharmacies, however, she has provided few details on how this would be accomplished. The Petitioner did not specify the prescription drugs she would sell in her pharmacies and at what price, only assigning prices to generic product categories, such as "prescription-compounded medications-low price (\$50)," "prescription-compounded medications-average price (\$100)," "herbal supplements (\$30)," amongst others. However, it is not clear whether different prescription medications and herbal supplements would vary in price substantially based on the specific product. Therefore, the generic prices provided by the Petitioner give little support to its projection that she would create three "affordable" compounding pharmacies, and that these stores would have a national-level impact on the prices of these products. In addition, the Petitioner provided little detail on how she would successfully navigate the extensive state and federal regulations and licensing requirements that apply to compounding pharmacies in the United States. In sum, the Petitioner provides little support for her financial and employment projections, and even if these plans were properly explained, that they would have a national level impact on an industry she indicated generated \$9.3 billion in revenue in 2020. In fact, the Petitioner does not address this conclusion of the Director on appeal. In sum, the Petitioner's business plan does not demonstrate that her proposed endeavor would, more likely than not, have significant potential to employ U.S. workers or other substantial positive economic effects. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner further submitted several others unexplained and unsupported claimed national impacts that would result from her proposed endeavor. For example, the Petitioner discussed how her entrepreneurship would stimulate "new markets," do away with "obsolete systems and technologies," and lead to "new and improved products" and "new innovative business practices." However, in each case, the Petitioner did not explain the new markets her endeavor would generate, systems and technologies it would replace, or new products or business practices it would generate. In fact, as we have discussed, the Petitioner provided little detail in her business plan as to what products she would sell in her proposed compounding pharmacies. *Id.*

In addition, the Petitioner asserted that her proposed endeavor would lead to "economic prosperity," "increased international integration and productivity," and have "substantial ripple effects" on the U.S. economy. Again, there is little explanation of what international integration and productivity is or what ripple effects would result from her proposed endeavor. Further, the Petitioner states that her ventures would "spur significant foreign direct investment (FDI) opportunities for the country, further contributing to the nation's economy and offering economic relief after the financial strains left by COVID-19." The Petitioner does not explain how her business plan to open three compounding pharmacies would spur foreign direct investment or alleviate financial strains from COVID-19 on a national level. While many new businesses, entrepreneurs, and immigrants may contribute to the economy in some way, it does not follow that all who start new businesses, generate revenue, and employ U.S. citizens have a potential prospective impact on a national level.

The Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed pharmacies, professional services, and entrepreneurship would rise 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. *Matter of Dhanasar*, 26 I&N Dec. at 893. As noted by the Director, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her proposed clientele. As such, the Petitioner has not demonstrated that her proposed endeavor would have a broad influence commensurate with national importance.

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, we decline to reach and hereby reserve the Petitioner's arguments with respect to the third prong outlined in *Dhanasar*. 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

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.