



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

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

In Re: 29023686

Date: DEC. 6, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a hospice, seeks second preference immigrant classification for the Beneficiary, a healthcare management specialist, 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.¹ Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition and dismissed a subsequent motion, concluding the Petitioner had not established the Beneficiary's eligibility for 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, petitioners must 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if:

¹ As indicated in the brief, the Beneficiary's spouse purchased the Petitioner in 2017. After the Beneficiary's spouse divested from the Petitioner, the Beneficiary's mother-in-law currently owns and operates the Petitioner.

² 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

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. At initial filing, the Petitioner's cover letter stated:

... [E]ven the best hospice care providers sometimes cannot determine the actual cause of death, because many of the hospice recipients have more the particular medical condition because of which the certifying physician referred the patient to hospice. A significant minority of patients (12%-15%) survive 6 months or more. Little is known about this population and how these patients differ from those with a more abrupt decline. Nor is it known whether hospices might be able to accurately predict which patients are likely to survive longer than 6 months. If hospice provider is able to detect how such additional conditions affect the patients it would enhance quality of life and alleviate suffering of hospice recipients. Also, the existing hospice providers, especially small ones do not have effective management of their resource and staff This endeavor has both significant merit and national importance because a specific management system of staff and procedures can be used by different providers and will allow the petitioner increase scope and quality of their services thus alleviating suffering of many and to a good percentile with prolonged life.

In response to the Director's request for evidence, the Petitioner offered a statement from the Beneficiary indicating:

In my work on the basis of the Hospice, I set the task of studying the main groups of psychosomatic diseases of patients with the subsequent development of a methodology for their psychological correction aimed at reducing the development and progression of the disease, as well as the development of detailed guidelines for each group of workers in contact with the patient, for each group psychosomatic illness. The value of the results of this study will be the possibility of using and implementing methodological developments not only in hospices, but also in any other medical institutions, where, as a result of identifying psychosomatic diseases at an early stage, the most effective prevention of the development of the disease will be possible, up to a complete recovery, and, as a result, a decrease in economic costs in the healthcare sector, because psychosomatic diseases require systematic diagnostic procedures, supervision of medical specialists, and medication.

My main goal is to utilize the results of my research to propose a national program which can increase longevity and quality of life for hospice patients. By doing so, we are hopeful to encourage individuals to live, rather than succumbing to a poor prognosis. The development and adherence of such programs can go beyond hospice care and into hospitals, skilled nursing facilities, and community programs. A holistic,

rather than biomechanical, approach to healthcare has been proven to decrease individual and governmental financial costs in global studies. I am confident that such a program will not only be beneficial medical[ly], but financially as well on a national level.

Another problem identified on the basis of the work of the hospice is that the work of the hospice staff is traveling in nature - often hospice patients live in different parts of the city. The problem of individual planning of the work schedule and the time limitation of medical personnel leads to a limitation of the employee's time spent with the patient, and, as a result, insufficient attention period. To avoid the above problems, I have developed a program designed to plan and optimize the work of hospice staff.

The Director found the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On motion, the Petitioner argued:

The [B]eneficiary's endeavor, which she began at [P]etitioner's facility, is to advance her research on psychosomatic triggers in hospice settings, and to further develop practical instructions to the staff of palliative care organizations on how to deal with these triggers to help hospice patients to cope and improve the conditions associated with these triggers.

On appeal, the Petitioner maintains the national importance of the Beneficiary's proposed endeavor. 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 specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner submitted evidence regarding hospice facts and figures, the Petitioner must demonstrate the national importance of the Beneficiary's specific, proposed endeavor rather than the importance of hospice and related care.³ 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.* 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. We note the Petitioner also provide evidence regarding hospice staffing shortages. However, occupational shortages do not render a proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Furthermore, to evaluate whether the proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the work. *Dhanasar*, 26 I&N Dec. at 889. Although the Beneficiary's statement briefly discusses her "research to propose a national program," the Petitioner did not show how the Beneficiary intended to disseminate her research findings and proposed program, such as through presentation or publication throughout her field, to show a broader impact. The record contains no evidence of the Beneficiary's plans for publication,

³ The Petitioner's arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national importance part.

presentation, or distribution of her work in the field, nor is there evidence reflecting the intention of her broadly sharing her future work in the healthcare industry.⁴ Rather, the Petitioner offered letters from select individuals indicating that they are experimenting with or applying the Beneficiary's concepts in their own facilities.⁵ As such, the Petitioner did not establish how the Beneficiary's proposed endeavor would largely influence the field and rise to the level of national importance. 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. *Id.* at 893. Likewise, the record does not show through supporting documentation how the Beneficiary's program concepts stand to sufficiently extend beyond the limited patients of selected doctors who were introduced to the Beneficiary's research, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Further, the Petitioner also contends that it presented an expert opinion letter from Dr. H-A-N-, who found the proposed endeavor has national importance. However, the letter also does not indicate how the Beneficiary's work will be distributed or disseminated throughout the field, to establish the broader impact of the Beneficiary's work. Moreover, the letter does not explain how the Beneficiary's research would have a wider influence in the field. Instead, the letter makes vague, general statements about hospice, palliative care, and treatment relating to national or global implications, significant potential to employ U.S. workers or other substantial positive economic effects, and enhancing societal welfare without specifically explaining how the Beneficiary's particular endeavor would impact any of these areas. For instance, the letter claims that the Beneficiary's "proposed endeavor in the field of hospice and palliative care is directly related [to] a number of government programs and initiatives, which further speaks to the importance of her presence and work in the United States." While the letter proceeds to list Medicare, the U.S. Department of Health and Human Services, the Centers for Medicare and Medicaid Services, the National Institutes of Health, and proposed bills, the letter does not articulate how the Beneficiary's specific work would affect any of these governmental agencies, programs, or initiatives. Without specific, detailed information, the letter does not establish the national importance of the Beneficiary's proposed endeavor.

Finally, for the reasons discussed about Dr. H-A-N-'s letter, the Petitioner also did not show that the Beneficiary's proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without credible evidence regarding any projected U.S. economic impact or job creation attributable to the Beneficiary's future work, the record does not demonstrate any benefits to the U.S. regional or national economy resulting from the Beneficiary's research or program would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*, 26 I&N Dec. at 890.

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated the Beneficiary's eligibility for a national interest waiver. Further analysis of her

⁴ Although more applicable under the second prong of the *Dhanasar* framework, the record contains no evidence of the Beneficiary's experience of publishing, presenting, or distributing her research or work. The Beneficiary's resume does not list any scholarly article publications, conference presentations, or other professional distributions.

⁵ None of the letters indicate how they became aware of the Petitioner's research, techniques, or proposed program.

qualification under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.⁶

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that it has not demonstrated the Beneficiary's eligibility 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.

⁶ 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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).