



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

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

In Re: 26991647

Date: JUN. 26, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a nurse who intends to own and operate an assisted living facility in the United States, seeks employment-based second preference (EB-2) immigrant 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner meets the requirements of 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:

- 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.²

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions with 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.

The Petitioner intends to own and operate an assisted living facility in [REDACTED] Florida, as its chief executive officer. The Petitioner initially described her proposed endeavor as follows:

My proposed endeavor is to own and operate the company [REDACTED]
[REDACTED] [T]he company will be a standard and licensed assisted living facility for the elderly that will be specifically designed and equipped with the needed accommodation and resources to give comfort and security to all our [residents] irrespective of the religion affiliations, their race, and health condition. [W]e will engage in services such as continuing care retirement communities, assisted living facilities and homes for the elderly, independent-living facilities, providing room and board, nursing and other supervision services, assistance in daily living and housekeeping services.

The Director concluded that, while the Petitioner's proposed endeavor has substantial merit, the Petitioner did not meet any of the three prongs of the *Dhanasar* framework. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her endeavor in order to establish her eligibility under the first prong of the *Dhanasar* analytical framework.

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*, 26 I&N Dec. at 889.

On appeal, the Petitioner submits copies of documents currently present in the record, including academic documentation, recommendation letters, and a letter of opinion. We note that the Director's decision stated that the Petitioner qualifies for the EB-2 classification based on her foreign equivalent of a U.S. advanced degree. We also note that the recommendation letters relate to the second prong

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).

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

of *Matter of Dhanasar*, an issue that will be reserved in this decision. Finally, we note that the letter of opinion discussing the Petitioner's eligibility for a national interest waiver covers her experiential qualifications, which relate to the second prong, and also discusses the healthcare industry itself, as opposed to describing how the Petitioner's proposed endeavor meets the qualifications for a national interest waiver. As such, this material will not be further discussed in this notice.

The Petitioner's appeal also contains a brief in which she provides statistics for small businesses in Florida and cites initiatives that are part of the 2023 budget for the Small Business Administration (SBA). The brief also includes data concerning assisted living in Florida, information about the healthcare industry and the high costs of care, and the importance of home healthcare services. The Petitioner provides the following:

I have knowledge and expertise as a Registered Nurse, which as a result I will strengthen relationships with influential professionals and industries in the market, in this way penetrating into important areas for the development of the market segment that for strategic and/or technical reasons have not yet been potentially explored.... Considering the employability presented, it can be concluded that my business generates significant economic and social impacts on the U.S. The positive social impacts stem not only from the generation of jobs and income itself but also from the economic alternative for various economic areas, such as the health industry.

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 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.* at 890. 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.*

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. Although the Petitioner's statements reflect her intention to build business networks and employ quality workers through use of her knowledge as a nurse, 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. *See Dhanasar*, 26 I&N Dec. at 893. Here, we conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her employees and facility residents to impact either the healthcare or assisted living industries more broadly at a level commensurate with national importance.

In addition, the Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. Specifically, she has not shown that her business activity stands to provide substantial economic benefits to Florida or to the United States. The business plan does not demonstrate that the benefits to

the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Further, although the Petitioner asserts that her company will hire U.S. employees, she has not provided evidence to show that she would employ a significant population of workers in the region, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. The Petitioner states that by the fifth year of operation, her facility will have eleven employees. While the Petitioner has provided data demonstrating economic hardship in the region within Florida in which she intends to operate her facility, it is not clear how an individual business of the size and scope described will impact those economic situations in a way that would positively affect the region. The Petitioner also cites a shortage of nurses in the United States as a positive impact because her facility will employ nurses; however, it is not clear how employment of a few individuals in an occupation in which there is a general national shortage would render the proposed endeavor nationally important under the *Dhanasar* framework. The Petitioner further cites research concerning the benefits of immigration and entrepreneurialism in the United States. Although this may be an issue of significance in the economy generally, the issue is not relevant to whether the Petitioner's specific endeavor to own and operate an assisted living facility rises to the level of national importance. The Petitioner has not demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified basis for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *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

The Petitioner has not demonstrated that her proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.