



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

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

In Re: 28819297

Date: NOV. 03, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, 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). She also seeks a national interest waiver of the job offer requirement attached to this classification under section 203(b)(2)(1)(B) of the Act

The Director of the Texas Service Center denied the petition, concluding that the record did not establish (1) the Petitioner's eligibility for EB-2 classification and (2) that a waiver of the classification's job offer requirement 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, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant 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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for EB-2 classification, the petitioner must then establish that a discretionary waiver of the job offer requirement would be "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 a matter of discretion,¹ 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. EB-2 CLASSIFICATION

In determining that the Petitioner did not establish her eligibility for EB-2 classification, the Director acknowledged that she holds the foreign equivalent of a U.S. bachelor's degree in nursing and more than five years of progressive post-baccalaureate experience in the same specialty, and thus possesses an advanced degree as defined at 8 C.F.R. § 204.5(k)(2). The Director concluded, however that "the occupation in which the self-petitioner intends to work does not require an academic or professional degree above a baccalaureate, or a baccalaureate degree followed by at least five years of progressive experience."

In reaching this determination, the Director did not address the evidence and arguments the Petitioner provided in response to a request for evidence (RFE) relating to her eligibility for EB-2 classification. Upon de novo review, we conclude that the Petitioner has established, by a preponderance of the evidence, that she is eligible for EB-2 classification as a member of the professions holding an advanced degree.

III. NATIONAL INTEREST WAIVER

The remaining issue before us is whether the record establishes that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. The Director determined that the Petitioner did not satisfy any of the three prongs set forth in the *Dhanasar* analytical framework. Although the Director found substantial merit in the Petitioner's proposed endeavor, they concluded that she did not establish that her endeavor has national importance, that she is well-positioned to advance the proposed endeavor, and that, on balance, waiving the job offer requirement would be beneficial to the United States.

On appeal, the Petitioner asserts that she met her burden to establish her eligibility under all three prongs of the *Dhanasar* framework. For the reasons provided below, we conclude that the Petitioner has not established the national importance of her proposed endeavor and therefore is not eligible for a national interest waiver as a matter of discretion. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

The first prong of the *Dhanasar* analytical framework, 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.

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).

As to the proposed endeavor, the Petitioner stated at the time of filing that she intends to work as a nurse to “assess patient health problems and needs, develop and implement nursing care plans, [and] maintain medical records.” In response to the Director’s request for evidence (RFE), the Petitioner indicated she would be working “in the field of entrepreneurship in nursing.” She submitted a “self-employment service plan” indicating her intent to work as a self-employed nurse. This plan states that the Petitioner will provide education, testing and clinical services to individuals diagnosed with diabetes and those at risk of developing diabetes, as well as providing training and support services to other healthcare workers who are interested in specializing in the care of this patient population.

In analyzing the first prong of the *Dhanasar* framework, the Director found that the Petitioner established the substantial merit of her proposed endeavor as a nurse but not its national importance. The Director concluded that the Petitioner’s plan to work as an entrepreneur in the nursing field, submitted in response to the RFE, constituted a material change to the proposed endeavor and, as such, would not be considered. The Director further noted that the submitted business plan/self-employment service plan postdated the filing of the petition, and therefore concluded that this evidence cannot establish the Petitioner’s eligibility at the time of filing. *See* 8 C.F.R. 103.2(b)(1).

In considering the Petitioner’s proposed endeavor as initially stated - to seek employment as a nurse in a clinical setting - the Director found that the Petitioner did not establish that her employment as a nurse would have a broad impact that would reach beyond her patients and her employer. Further, the Director noted that although the Petitioner submitted articles and industry information about the nursing shortage in the United States and the importance of the nursing occupation, this evidence relates to the substantial merit of the endeavor, which the Director agreed was established, but does not establish its prospective potential impact.

In determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the potential prospective impact of the “specific endeavor that the [noncitizen] proposes to undertake.” *See Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

In addressing the national importance of her proposed endeavor, on appeal, the Petitioner primarily addresses evidence in the record pertaining to her education and employment experience, the national and global prevalence of diabetes, and the shortage of nurses and other healthcare workers in the United States. She reiterates her claim from the RFE response that she will have her own business and serve as president of “a company specializing in comprehensive care services for patients diagnosed with diabetes.” The Petitioner notes that her endeavor’s national importance will derive from broad economic and social benefits, such as reduced medical expenses, better quality of life for diabetes patients and their families, creation of direct and indirect jobs, generation of tax revenue and other economic benefits, advancements in the field of nursing, and “alleviation of a health crisis in the United States.”

The Petitioner claims her proposed endeavor to establish a company specializing in comprehensive services for patients diagnosed with diabetes will have substantial positive economic effects. However, we note the Petitioner does not directly address the Director's finding that her plan to establish this company represents a material change to the initial proposed endeavor.² She briefly notes that she may initially work in a hospital or clinical setting as a nurse (as stated at the time of filing), but does not dispute the Director's determination that the record did not establish the national importance of her initial proposed endeavor. The Petitioner similarly does not address on appeal the fact that the business plan for her entrepreneurial endeavor was developed after the filing of the petition.³ Ordinarily, when an adverse finding is not addressed by the appellant on appeal, we consider that issue to be waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived).

Nevertheless, we have reviewed the Petitioner's "self-employment service plan" and conclude that, even if we were to consider the establishment of this business to be part of the Petitioner's initial proposed endeavor, it does not establish the endeavor's national importance. Although the Petitioner emphasizes on appeal that her business will create jobs, her plan for self-employment does not identify the number or types of workers she would hire. The financial forecast included in the plan shows payroll expenses increasing from year to year, but the "personnel plan" identifies the Petitioner as the only expected employee for the first five years. In addition to containing this apparent inconsistency, the plan does not provide a credible methodology underlying the assumed expenses, projected income, and other financial projections. Because the assumptions in the business plan do not have a clear basis, we cannot assess whether the plan's stated projections for revenue, payroll and tax contributions are credible. Therefore, the Petitioner has not established that her intended business would have a substantial positive economic effect commensurate with national importance.

We acknowledge the Petitioner's arguments that diabetes prevention and treatment are important given the prevalence of the disease, and that a healthier population would have a positive indirect impact on the U.S. economy, in part due to decreased healthcare costs. The Petitioner states in her self-employment plan that her services will "serve to increase the overall quality of life of the U.S. population – and by extension – strengthen the national economy." While the Petitioner submitted evidence in support of her claim that the healthcare field significantly contributes to the U.S. economy, the Petitioner has not demonstrated that her specific endeavor would have national economic implications or similarly far-reaching results. As such, the record does not support a determination that any indirect benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See id.* at 890.

Beyond its direct economic impacts, the Petitioner states in her plan for self-employment that her endeavor will "make a significant contribution to the healthcare industry," in part by providing training

² A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the original evidence in the record. *See id.* at 176.

³ A petitioner must establish eligibility at the time of filing the petition. 8 C.F.R. § 103.2(b)(12). A visa petition may not be approved when a petitioner, initially ineligible at the time of filing, becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

to other healthcare workers in the proper management of diabetes. She contends that she will promote the health of Americans, advocate for healthcare, educate patients and the public on preventing disease, and provide critical care for those with diabetes. The Petitioner further argues that her endeavor will improve patient outcomes, train healthcare workers, and enhance healthcare management and societal welfare. Finally, she emphasizes the shortage of nurses and other healthcare workers in the United States. We agree that the healthcare field provides all the national benefits the Petitioner describes and acknowledge that there is a shortage of qualified nurses in the United States. But as noted, when determining national importance for national interest waiver purposes, USCIS must focus on whether an individual's specific undertaking would have national implications in their field. The record does not contain evidence supporting a conclusion that the Petitioner's proposed endeavor would lessen the shortage of nurses, increase access to healthcare in the United States, or improve health outcomes on a scale commensurate with national importance.

In *Dhanasar*, we found that a proposal to teach in the science, technology, engineering, and math ("STEM") disciplines at a university had substantial merit regarding U.S. educational interests. 26 I&N Dec. at 893. But we concluded that the record did not demonstrate the proposal's national importance because of insufficient evidence that the petitioner "would be engaged in activities that would impact the field of STEM education more broadly." *Id.* As in *Dhanasar*, the Petitioner has demonstrated that her proposed nursing activities have substantial merit. But she has not established that her specific endeavor would impact her field broadly enough to be deemed nationally important. Even if we consider the proposed education and training services the Petitioner outlines in her self-employment plan, the record does not establish, for example, that she would reach a wide audience of healthcare professionals, that her company would provide a significant platform for the introduction of new methods of preventing or treating diabetes, or that she would otherwise be positioned to influence the broader field or industry in this regard. Similarly, while the Petitioner's nursing activities will likely enhance the well-being of the patients she treats, the record does not support a finding that the proposed endeavor has the potential to broadly enhance societal welfare, as claimed.

The Petitioner has also claimed that her proposed endeavor will have an impact on public health matters that are the subject of national initiatives by the U.S. government. She submitted a copy of President Obama's June 2010 Executive Order 13544 – "Establishing the Prevention, Health Promotion, and Public Health Council." USCIS will consider evidence demonstrating how a specific proposed endeavor impacts a matter that a government entity has described as having national importance or a matter that is the subject of national initiatives. However, pursuing employment or operating a business in an area that is adjacent to the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. Here, while we recognize the U.S. government's interest in promoting public health and measures that reduce risk factors for disease, for the reasons already discussed, the Petitioner has not demonstrated the potential prospective impact of her specific endeavor with respect to these matters.

Finally, to illustrate the potential benefit of her proposed endeavor, the Petitioner pointed to her past employment experience and qualifications in nursing and healthcare field. We reviewed her statements and letters of recommendation from her previous employers, peers, and experts in the field. The authors of the letters praise the Petitioner's abilities and subject-matter expertise as a nursing professional and explain how her experience prepares her to carry out the proposed endeavor. However, we note that the Petitioner's knowledge, skills, education, and experience are considerations

under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." 26 I&N Dec at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of her proposed work.

On appeal, the Petitioner suggests that the Director improperly imposed a higher standard of proof than a preponderance of the evidence, noting that "USCIS must not apply the test leads so strictly as to circumvent the law and the true purpose of Congress in creating the National Interest Waiver." However, the Petitioner does not point to any specific instances where the Director failed to apply the appropriate standard. While the Petitioner provided a significant volume of evidence, eligibility for the benefit sought is not determined by the quantity of evidence alone but also the quality. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). Here, for the reasons discussed, the evidence does not persuasively establish how the Petitioner's proposed endeavor will have a potential prospective impact consistent with national importance. Accordingly, the Petitioner has not established that the proposed endeavor meets the first prong of the *Dhanasar* framework.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve her appellate arguments concerning her eligibility under the second and third prongs of the *Dhanasar* framework. See *INS v. Bagamashad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions"); 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 the affected party is otherwise ineligible).

IV. CONCLUSION

The Petitioner has not established that she meets the requisite first prong of the *Dhanasar* framework regarding national importance. We therefore conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.