



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

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

In Re: 28744313

Date: NOV. 07, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur and business management consultant, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). 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. The Director concluded that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate his eligibility for the requested 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest."

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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 discretion², 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 Petitioner states that he proposes to work in the United States as an entrepreneur. The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree; however, he did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar prong. The Director further found that the Petitioner did not establish that he is well positioned to advance the proposed endeavor, and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. Upon de novo review, we agree with the Director’s determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.³

For the underlying EB-2 classification, we agree with the Director that the Petitioner qualifies for classification as a professional holding an advanced degree.⁴

However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar prong. The Director further found that the Petitioner did not establish that he is well positioned to advance the

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).

³ While we may not discuss every document submitted, we have reviewed and considered each one.

⁴ The Director indicated the Petitioner’s EB-2 classification as an advanced degree professional is based on his academic credentials. Although we agree that the Petitioner is eligible for the EB-2 classification as an advanced degree professional, the record does not show that he has the U.S. academic or professional degree or the foreign equivalent degree above that of a U.S. bachelor’s degree. Instead, the record shows that the Petitioner earned the foreign equivalent of a U.S. bachelor’s degree followed by five years of progressive experience in the specialty. The record indicates the Petitioner earned a degree in medicine (titulo de medico) from Universidade [redacted] in Brazil in 1996 and a post-graduate MBA in health from [redacted] College in Brazil in 2010. The academic evaluation from Highstone indicates the degree in medicine is the foreign equivalent of a U.S. bachelor’s degree. The record also includes employment letters indicating he worked for more than five years as a medical manager, a medical liaison officer, and a research scientist. Therefore, the record shows that the Petitioner is an advanced degree professional based on his degree in medicine (titulo de medico) being the foreign equivalent to a U.S. bachelor’s degree and his more than five years of progressive experience in his specialty, the healthcare field.

proposed endeavor, and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification.

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 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." *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner initially submitted a professional plan and statement with his Form I-140 stating that he proposed to work as an entrepreneur "in the healthcare sector, specifically serving as a consultant and owner of various medical-based businesses." He described starting a medical-based business and working as a consultant for national and international businesses in the healthcare field.

The Petitioner initially described three business projects related to his proposed endeavor. The Petitioner proposes to establish a new business with two other individuals in Utah, [REDACTED] [REDACTED] which would manufacture "antimicrobial-based products and complimentary solutions that mitigate microbial growth over the long term." The Petitioner also proposes to work in the United States as a medical consultant for [REDACTED] a U.S. hypothermia treatment business that is interested in expanding throughout the United States. The third project relates to a Brazilian natural medicine business, [REDACTED] which intends to expand its business into the United States. The Petitioner indicates that he currently serves on the board of the Brazilian company and proposes to work as its U.S. country manager to help with the exportation of its raw medical products from Brazil to the United States. The Petitioner's initial statement stresses his experience as a physician in Brazil to show that he "understands the medical and pharma industry from an international point of view" and that he is therefore "capable of supporting and helping any foreign company that is doing, planning, or wanting to do business with the [United States] . . . so as to advance the proposed endeavor of seizing market and investment opportunities for U.S. healthcare companies doing business in North America, Brazil and Latin America."

The Petitioner's initial description of the proposed endeavor to establish his own antimicrobial-based product business and to work as a consultant for healthcare companies does not extend beyond working in the healthcare field. The Petitioner did not include any specific plans or evidence about being an entrepreneur in the business management field.

The Director issued a request for evidence notice seeking further information and evidence that the Petitioner meets each of the three prongs of the Dhanasar framework. The request for evidence explained that with respect to *Dhanasar's* first prong, the Petitioner did not provide sufficient detail or description of his proposed endeavor for the Director to determine whether it has substantial merit and national importance.

In response, the Petitioner's Counsel stated the Petitioner "intends to continue his career in the United States as an Entrepreneur." (emphasis omitted). Counsel stresses the Petitioner's post-graduate degree in business management and his professional experience in business development to show the

Petitioner will be an entrepreneur for “the business development and business functions of U.S. companies.” The reply includes documentation previously provided with the Petitioner’s initial petition, namely the Petitioner establishing his new antimicrobial-based products business, [REDACTED]; working as a medical consultant for [REDACTED] and working as a U.S. country manager for [REDACTED]. The Petitioner also submitted evidence relating to additional proposed endeavors, including his proposed work as a senior consultant at [REDACTED], a manufacturer of dog treats, and as the owner and chief operating officer of his new business, [REDACTED] which he established in 2020.

[REDACTED] is described in his resume as “a consulting firm focused to serve other companies around the globe to come to the [United States] and establish [sic] their operations with all the necessary documentation [sic] . . .” The business provides companies with the “knowledge, strategies, and relationships they need to enter the [United States] and other markets” as well as, “legal and semi-legal services” to help companies “establish a legal entity and create the legal contracts” needed to launch a business in the United States. The record includes a sampling of the companies it has worked with, including [REDACTED] a food and brand business that expanded from Brazil to the United States; [REDACTED] a kids haircutting franchise business; [REDACTED] a company exporting U.S. products to Brazil; [REDACTED] a foreign food company investing in the United States; [REDACTED] Gluten-free Bakery, a local bakery expanding in the United States; and [REDACTED] a restaurant in Utah selling its business.

The Director’s decision describes the Petitioner’s proposed endeavor as being “an entrepreneur in the field of business management of [his] five companies.” Although the Director indicates that the Petitioner “did not explain what [his] specific undertaking is in the United States” and that “[t]he evidence suggests [the Petitioner has] no proposed endeavor,” the Director found that the Petitioner’s proposed endeavor has substantial merit. The Director did not provide an explanation for this finding. The Director, however, also found that the record was insufficient to establish the national importance of the proposed endeavor.

On appeal, the Petitioner does not address the Director’s statement that the Petitioner did not explain his specific undertaking. Instead, the Petitioner focuses his arguments on the national importance of his proposed endeavor to be an entrepreneur in the field of business management.⁵

The record initially depicted the Petitioner’s endeavor as an entrepreneur for medical-based products and as a consultant to businesses in the healthcare field. The initial petition described the Petitioner’s proposed new antimicrobial-based product manufacturing business, [REDACTED] his working as a medical consultant for a hyperthermia treatment business, [REDACTED] and his working as a U.S. country manager for a Brazilian natural medicine company, [REDACTED]. The Petitioner’s reply to the request for evidence does not enhance or clarify the

⁵ We note that the Petitioner’s arguments in the appeal brief include language not associated with the Petitioner’s proposed endeavor. For instance, in arguing the national importance of his proposed endeavor, the brief states, “As shown herein, the Appellant will help companies and clients . . . while also helping with the administrative tasks of operating a shoe company for disabled Americans, as well as shoes for those without disabilities.” (emphasis added). The brief further states, “. . . he will use his position in the business and transportation management field to educate Americans on both the importance of foreign trade and logistics management.” (emphasis added).

Petitioner's initially proposed endeavor. Instead of clarifying the Petitioner's proposed endeavor, the Petitioner resubmitted evidence initially provided with the petition and presented new facts regarding the proposed endeavor which are material to eligibility for a national interest waiver. The Petitioner describes in the reply and on appeal that his proposed endeavor is as an entrepreneur in the business management field. The Petitioner's proposed endeavor is material to whether the endeavor has substantial merit and is of national importance. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); see also *Matter of Dhanasar*, 26 I&N Dec. at 889-90. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. 8 C.F.R. § 103.2(b)(1). "A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to [USCIS] requirements." See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). As such, the revised endeavor cannot retroactively establish eligibility.

When responding to the Director's request for evidence, the Petitioner introduced a new proposed endeavor with a new set of facts, rather than establishing the national importance of the proposed endeavor described in the initial petition. The Petitioner initially stated that his proposed endeavor would be as an entrepreneur and a consultant in the field of healthcare, and in the reply and on appeal he proposes to be an entrepreneur in the field of business management. His reply indicated that in addition to his initially indicated projects, he also proposes to work for his newly established business consulting firm, [REDACTED] which provides consulting to any international companies interested in doing business in the United States, and to work as a senior consultant for [REDACTED] a manufacturer of dog treats.

The new facts were presented after the filing date and cannot retroactively establish eligibility. The indicated new proposed endeavor of being an entrepreneur in the field of business management is a material change from the initial proposed endeavor of being an entrepreneur and a consultant to businesses in the field of healthcare.⁶ 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 facts in the record. Therefore, on appeal, we will consider if the record demonstrates that the proposed endeavor submitted with the initial filing, an entrepreneur and consultant to businesses in the healthcare field, has substantial merit and national importance. We conclude that while the proposed endeavor has substantial merit, the record does not demonstrate its national importance.

The Petitioner generally contends on appeal that the Director "did not apply the proper standard of proof . . . , instead imposing a stricter standard, and erroneously applied the law" (emphasis omitted). The Petitioner further argues that the Director "did not give due regard" to the evidence submitted, specifically the business plans and his professional statement showing the Petitioner's potential benefits to the United States, and industry reports and articles showing the national importance of his proposed endeavor and the steep shortage of U.S. professionals in his field.

⁶ The Petitioner's qualification for the underlying EB-2 classification as an advanced degree professional is not supported by the material change of his proposed endeavor to work as an entrepreneur in the field of business management. The record includes employment letters showing his more than five years of progressive experience in his initial specialty, the healthcare field. The record does not support the Petitioner having more than five years of progressive experience in the field of business management.

The record includes the Petitioner's professional plan and statement explaining that his proposed endeavor will "generate quality job opportunities for low-skilled (production work) and high-skilled workers" and "will positively impact the health of the American populace." He asserts that he intends to share his "knowledge in broad medical and healthcare areas by building relationships with multidisciplinary health teams and other corporate medical entities" which will allow him "to elevate the United States' healthcare quality standards, as well as provide, or rather improve, the U.S. medical landscape by offering rewarding health management and treatment techniques." He stresses his proposed endeavor supports U.S. national initiatives by responding to the U.S. healthcare shortcomings from the COVID-19 pandemic. He emphasizes that as a physician he understands the medical and pharmaceutical industry and is therefore capable to assisting foreign healthcare companies that do, or plan to do, business and make investments in the United States. The Petitioner also stresses the importance of entrepreneurs to creating positive social change, community development, and adding to the national income.

The record includes the Petitioner's business plan for his antimicrobial-based product business, [REDACTED] [REDACTED] The business plan includes a statement that the Petitioner would own 30 percent of the business and work as its chief operating officer. The business plan describes the business' surface coating; the process and use of the product; its potential market, competition, and regulatory issues; and financial forecasts. The record also includes business plans for [REDACTED] [REDACTED] the hyperthermia treatment business for which he proposes to work as a medical consultant, and [REDACTED] the Brazilian natural medicine company for which he proposes to work as its U.S. country manager. While the business plans explain the businesses and their intent to expand in the United States, they do not provide information or details relating to the Petitioner's role in the businesses and the potential prospective impact of his proposed endeavor.

Upon de novo review, the record does not show by a preponderance of the evidence that the Petitioner's proposed endeavor described in his statement satisfies the national importance element of *Dhanasar*'s first prong. 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. Here, we conclude the record does not show that the Petitioner's proposed endeavor, as initially described, stands to sufficiently extend beyond his business and his employers and their clientele to impact the healthcare field, or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner has not provided corroborating evidence to support his general claims that his proposed endeavor stands to provide substantial economic and health benefits to the United States. The Petitioner's claims have not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide economic or health benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of *Chawathe*, 25 I&N Dec. at 376. Beyond general assertions, he has not demonstrated that the work he initially proposes to undertake as a chief operating officer of his antimicrobial-based product manufacturing business; as a medical consultant for a U.S. hyperthermia treatment business, and as a U.S. country manager for a Brazilian natural medicine company, offers original innovations that contribute to advancements in his industry or otherwise has broader implications for the healthcare field.

In determining national importance, the relevant question is not the importance of the industry in which the Petitioner will work; instead, we focus on the Petitioner's proposed specific endeavor, and its impact on the industry or the U.S. economy. See *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner has not sufficiently demonstrated that his specific proposed endeavor has significant potential to impact the healthcare field, employ U.S. workers, or otherwise offer substantial positive economic effects for our nation. While the Petitioner's initial statements reflect his intention to provide medical and healthcare expertise into the U.S. healthcare industry, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. Moreover, subsequent material changes to the proposed endeavor cannot retroactively establish eligibility at the time of filing, and the record contains conflicting information about the basic nature of the proposed endeavor.

The Petitioner further argues on appeal that the national importance of his proposed endeavor is evidenced in industry reports and articles. The record includes reports and articles relating to the impact of the COVID-19 pandemic on the U.S. healthcare system; the importance, challenges, and careers in operations management; management consulting; and the economic benefits of U.S. immigrant workers and entrepreneurs. We recognize the importance of the healthcare industry and related careers, and the significant contributions from immigrants who have become successful entrepreneurs. However, merely working in the healthcare field, starting an antimicrobial-based product manufacturing business, working as a medical consultant for a U.S. hyperthermia treatment business, or working as a U.S. country manager for a Brazilian natural medicine company is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See *id.* The industry reports and articles submitted do not discuss any projected U.S. economic impact, job creation, or healthcare benefits specifically attributable to the Petitioner's proposed endeavor.

To further support the national importance of his endeavor, the record includes an opinion from [REDACTED] [REDACTED] a podiatric physician, and a professor for the nursing department at [REDACTED] [REDACTED] in New York. The opinion, however, focuses on the Petitioner's work being "in an area of substantial merit and national importance." It describes the importance of medical scientists and the importance of importing medical devices and products to the United States. The opinion focuses on the Petitioner proposing to be a medical scientist and a professional whose experience would benefit U.S. medical import/export businesses; U.S. health companies requiring training of their professionals; and the U.S. healthcare system by encouraging Brazilian students to study medicine in the United States. The opinion does not mention or focus on the Petitioner's specific proposed endeavor and its potential prospective impact in the field of healthcare.

For the foregoing reasons, the Petitioner's proposed work does not satisfy the "national importance" element of the first prong of the *Dhanasar* framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. 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 find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.