



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

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

In Re: 26925875

Date: NOV. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physician, 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. 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, concluding that the record did not establish that the Petitioner qualifies for the 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 qualify for a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates EB-2 eligibility, 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 discretion,¹ 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 record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.² 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.

After training in a two-year internship and working as a medical officer at various hospitals, the Petitioner opened his own practice in [REDACTED] South Africa, in 2014, where he still worked as a “general practitioner/family physician” when he filed the petition in September 2021. Documents submitted with the petition indicate that the Petitioner had enrolled in a master’s degree program in physiological sciences, but that program was due to begin in November 2021, after the filing date.

The Director concluded that the Petitioner had met only the first prong of the three-pronged *Dhanasar* framework.

A. Proposed Endeavor

The Petitioner’s initial submission did not describe a single, consistent endeavor that the Petitioner proposes to undertake. Rather, the Petitioner has described different options. The Petitioner’s own statement, a business plan, and letters submitted with the petition referred to several different endeavors, including providing medical care to uninsured or underserved populations; pursuing credentials in pathology; managing another physician’s medical practice; and working in the pharmaceutical industry as a medical science liaison.

The term “endeavor” is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. The explanation of the proposed endeavor should describe more than the duties and responsibilities of the occupation, also listing the specific projects and goals. *See generally* 6 *USCIS Policy Manual* F.5(D), <https://www.uscis.gov/policy-manual>.

The materials submitted with the petition do not detail one specific proposed endeavor. Rather, they list a number of different avenues that the Petitioner may choose to pursue, based on either his existing skills or training that he might acquire in the future after further education or training. Speculation about ventures that the Petitioner might undertake in the future does not sufficiently describe a specific proposed endeavor to allow for analysis and assessment under the three-prong *Dhanasar* framework. A proposed endeavor entails and requires a specific plan, rather than the skill set that an individual uses to put that plan into action.

² In 2009, the Petitioner received a degree from [REDACTED] University in South Africa, equivalent to a Doctor of Medicine degree from an accredited U.S. medical school.

The Petitioner's initial submission included substantial information about medically underserved populations. In a request for evidence (RFE), the Director observed that Congress created a separate procedure to provide the national interest waiver to physicians seeking to practice in underserved areas. *See* section 203(b)(2)(B)(ii) of the Act. The regulations at 8 C.F.R. § 204.12 describe the requirements for physicians to qualify for a national interest waiver under those provisions. The publication of *Matter of Dhanasar* as a precedent decision did not nullify or alter those statutory provisions or their implementing regulations. The Petitioner does not claim to have met those statutory and regulatory requirements, and he has cited no provision of law that permits a physician to opt out of those requirements while still seeking a national interest waiver based on practicing in an underserved area.

The Petitioner's response to the RFE did not directly address the above information, but that response included a narrower description of the proposed endeavor, which emphasized research rather than clinical practice and made no reference to underserved populations:

My proposed endeavor is to build on my extensive experience as a primary care physician treating and assisting with research on patients with acute COVID-19 as well as long COVID. . . . I plan to pursue a Ph.D. degree in the field of Biomedical Science focusing on COVID-19 / long COVID.

On appeal, the Petitioner states that he “plans to exercise medical practice, particularly in underserved areas,” and “further intends to be involved in regular research activities.” The Petitioner has not specified the proportion of time he would devote to practice and to research, and such information is necessary in order for USCIS to assess his proposed endeavor fully and accurately.

B. Substantial Merit and National Importance

The first *Dhanasar* 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director concluded, without elaboration, that the Petitioner had met the first prong of the *Dhanasar* framework. The substantial merit of medical practice and research is not in question here, but we disagree with the Director's determination that the Petitioner has shown that the proposed endeavor has national importance.

As discussed above, the Petitioner's proposed endeavor involves both clinical practice and research. The Petitioner did not specify which aspect of the proposed endeavor would occupy the majority of his time.

It appears that the Petitioner's direct impact as a practicing physician would largely be limited to the patients he would treat and the practice or clinic where he would work. For comparison, *Dhanasar* includes the following discussion of an individual's proposed teaching activities:

While STEM teaching has substantial merit in relation to U.S. educational interests, the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly. Accordingly . . . the petitioner has not established by a preponderance of the evidence that his proposed teaching activities meet the “national importance” element of the first prong of the new framework.

Matter of Dhanasar, 26 I&N Dec. at 893. Similar reasoning applies here. Just as a teacher has a limited number of students, so does a physician serve a limited number of patients. Statistics about the aggregate impact of *all* physicians do not specifically show that the work of any one single physician has national importance. Likewise, information about the impact of the COVID-19 pandemic does not show how the Petitioner’s impact on that pandemic would extend beyond treatment of individual patients.

Medical research can have national importance, but the Petitioner’s initial submission provided few specific details about his research plans. The initial submission heavily emphasized the Petitioner’s intention to practice medicine. A 15-page introductory brief focused largely on providing medical care to underserved or underinsured populations. The section of the brief dedicated to the first *Dhanasar* prong indicates that the Petitioner’s “work seeks to expand the field of Pathology both in research and personnel.” The brief does not elaborate or explain, turning instead to a longer discussion of “healthcare in rural areas.”

The initial submission included two letters designated as “expert opinion letters,” both of which focused heavily on the Petitioner’s clinical practice of medicine. One of these two letters discusses research only briefly, stating: “His knowledge of anatomy, physiology, and pathophysiology would vastly contribute to the research setting. By assisting in the preparation of the laboratory and experiments, he will mentor and train undergraduate students, thereby contributing to the workforce.” The other letter does not address the issue of research at all.

The Petitioner submitted five other letters from individuals who know the Petitioner, primarily through studying or working with him. Several of these individuals offered the general assertion that the Petitioner would be well-suited for research, but they provided no details about that research.

The 26-page business plan submitted with the petition includes three sentences about the possibility that the Petitioner would engage in research. The section of the business plan dedicated specifically to the issue of the Petitioner’s “National-Level Impact” consists of statistics relating to physician shortages, COVID-19, health insurance, and other issues.

Given the evidence submitted with the initial filing of the petition, we do not conclude that research was a major component of the proposed endeavor at the time of filing. Instead, the evidence included almost incidental discussion of research as being one of several avenues that the Petitioner might choose to pursue beyond his clinical practice.

The Petitioner’s brief statement in response to the RFE provided more information about his research plans, but he did not show that these plans were in place nine months earlier when he filed the petition. A petitioner must meet all eligibility requirements at the time of filing. *See* 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, 175 (Comm'r 1998). The emphasis on research appeared only after the Director advised the Petitioner that practicing medicine in a shortage area is not a basis for granting the national interest waiver under *Dhanasar* because separate, dedicated provisions exist for physicians intending to practice in those areas.

For the above reasons, we disagree with the Director's conclusion that the Petitioner has established the national importance of the proposed endeavor. But because the Director had granted the first prong of the *Dhanasar* framework, below we will consider the Petitioner's arguments and evidence concerning the second prong.

C. Well Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong shifts the focus from the proposed endeavor to the individual. To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

In denying the petition, the Director stated:

[T]he petitioner has not substantiated how his specific education, training, memberships, and work experience in the medical field as a primary care physician and researcher has served as an impetus for progress in the field, that it has affected the field, or that it has generated substantial positive discourse in the broader medical and research community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in his area of expertise.

On appeal, the Petitioner asserts that the Director relied on incorrect standards, because *Dhanasar* does not mention "an impetus for progress in the field" or "substantial positive discourse." While these specific phrases do not appear in *Matter of Dhanasar*, *Dhanasar* references reliance on an individual's "record of success," "progress toward achieving the proposed endeavor; and the interest of . . . relevant entities or individuals." An individual whose endeavor does not drive progress in the field and which has not attracted positive commentary would likely have difficulty establishing that they are well positioned in accordance with *Dhanasar*.

The Petitioner also states that, in the RFE, the Director only requested evidence regarding a "perceived lack of a record of success or progress," leading the Petitioner to assume that no further evidence was required "to demonstrate that the Petitioner had an actionable plan for future activities" and "interest from relevant entities in the endeavor itself." The Petitioner states that the omission of these factors from the RFE deprived the Petitioner of the opportunity to complete the record.

In the RFE, the Director did not state that the Petitioner had established "an actionable plan" or established "interest from relevant entities." The Director stated:

The beneficiary's education, experience and skill sets, and accomplishments are insufficient to demonstrate that he is well positioned to advance his proposed endeavor. . . . The evidence does not reflect that the Beneficiary's work constitutes a record of success or progress in related or similar efforts, or is otherwise well positioned to advance his endeavor.

The Director also listed several suggested types of evidence that the Petitioner could submit to establish "[a] model or plan for future activities," and "[t]he interest of potential customers, users, investors, or other relevant entities or individuals." In contrast, when the Director stated that the Petitioner had established the substantial merit of the proposed endeavor, the Director did not list the suggested or required evidence in that regard.

For the reasons discussed below, we agree with the Director that the Petitioner has not established that he is well positioned to advance the proposed endeavor.

The evidence that the Petitioner submitted in attempt to meet the second *Dhanasar* prong leans heavily toward his qualifications to practice medicine, rather than to conduct medical research. We have already explained, above, that the Petitioner has not shown the national importance of his planned clinical practice, and that a physician seeking a national interest waiver to practice medicine in an underserved area must follow a statutory and regulatory framework independent of *Dhanasar*. Therefore we need not discuss how the Petitioner's proposed medical practice fares under the second and third prongs of the *Dhanasar* national interest framework.

The *USCIS Policy Manual* states that a petitioner may rely, in part, on "[l]etters from experts in the person's field, describing the person's past achievements and providing specific examples of how the person is well positioned to advance the person's endeavor." See generally 6 *USCIS Policy Manual*, *supra*, at F.5(D)(1). As noted above, the Petitioner specifically referred to two of the submitted letters as "expert opinion letters." Both of the identified experts are assistant professors at medical schools. One of them trained in pharmacy; the other holds degrees in microbiology, viral immunology, pharmacology, and neuroscience. The two identified expert opinion letters do not discuss the Petitioner's research plans in any depth, and they do not indicate that he is well positioned to advance the research element of his proposed endeavor.

Below, we will explain why the Petitioner has not established that he is well positioned to advance the research portion of his proposed endeavor, in the context of the four non-exclusive factors listed in *Matter of Dhanasar*, 26 I&N Dec. at 890.

The first specified factor is "the individual's education, skills, knowledge and record of success in related or similar efforts." Here, the Petitioner did not claim any research experience at the time he filed the petition. He contended that his "degree and medical expertise" made him "better qualified and experienced than a graduate with a bachelor's degree in science," but he did not provide documentary evidence showing that his existing education and experience qualified him for a research position. Instead, he stated:

I have started the process to obtain an additional master's degree or a Ph.D. in the Cellular/Medical Biology field. . . . I am currently in the process of enrolling for a master's degree in physiological science at the University of [REDACTED] South Africa. This would allow me to gain research experience. . . . These invaluable skills would further enable me to pursue a Ph.D. degree at a US university.

Letters from the Petitioner's colleagues, submitted at the time of filing, stated that the Petitioner "would also be a perfect candidate for a research position in the medical field" because "[p]hysicians are perfectly suited for biomedical research." But, consistent with the Petitioner's own statement, they also indicated that the Petitioner would need to pursue additional graduate degrees in order to perform that research.

The Petitioner submitted documentation from [REDACTED] University confirming his registration for a master's degree program in physiological sciences, listing classes beginning in November 2021. The résumé and business plan submitted with the petition both list the Petitioner's educational credentials, and neither of those documents indicates that he had taken completed any coursework toward that master's degree.

Months later, in response to the RFE, the Petitioner indicated that he had begun conducting research, and stated: "I plan to pursue a Ph.D. degree in the field of Biomedical Science." Even with the progress that had occurred after the filing date, the Petitioner acknowledged that he would need to pursue another degree program in the future.

Dhanasar permits us to consider an individual's *existing* "education, skills, [and] knowledge" when evaluating the proposed endeavor at the time of filing. *Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner's need to pursue further education shows that he was not well positioned to pursue a proposed endeavor in research when he filed the petition.

In his response to the RFE, the Petitioner described his "recent research," and stated that an "article associated with this research is currently being reviewed by the Journal of *eBiomedicine*." The Petitioner did not submit any documentary evidence to corroborate this claim. Unsubstantiated claims are not sufficient to meet the petitioner's burden of proof. *See generally* 6 USCIS Policy Manual, *supra*, at F.5(D)(1). Furthermore, at the time he filed the petition, the Petitioner did not claim to have conducted any medical research or to have submitted a manuscript for publication. Any experience or education that the Petitioner gained after the September 2021 filing date cannot retroactively establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The record does not establish that, at the time he filed the petition, the Petitioner had the necessary education or experience for him to be well positioned to conduct the medical research integral to his proposed endeavor.

With respect to a model or plan for future activities, we have already shown that the Petitioner's proposed endeavor, at the time of filing, included several alternative trajectories. The most detailed information was in a business plan that was largely limited to describing the Petitioner's intended medical practice. Statements from the Petitioner and others speculated about research, consulting for

the pharmaceutical industry, classroom instruction, and other possibilities. The Petitioner's response to the RFE included a more focused discussion of the proposed endeavor, concerning a specific area of research that the Petitioner did not mention in his initial filing.

As a result, the Petitioner has not shown that he had a specific model or plan for future activities at the time of filing.

We turn now to the Petitioner's progress towards achieving the proposed endeavor. The Petitioner's initial submission did not show that he had taken any concrete steps toward obtaining licensure to practice in the United States; he referred only to his intentions to do so.

In the denial notice, the Director stated that the Petitioner's "medical practice in South Africa does not show progress towards achieving his proposed endeavor in the United States." On appeal, the Petitioner interprets this sentence to mean that the Director refused to consider the Petitioner's existing medical practice because it is in South Africa rather than the United States. We agree with the Petitioner that progress outside the United States warrants consideration, but we do not share the Petitioner's interpretation of the quoted passage from the denial notice.

The Director's comment related specifically to the Petitioner's submission, in response to the RFE, of financial documentation relating to the Petitioner's medical practice. While the Petitioner's years of experience operating a medical practice speak to his overall credentials, we agree with the Director that the Petitioner's establishment of a medical practice in South Africa does not represent progress toward the proposed endeavor. His practice abroad does not show progress toward either establishing a practice in the United States or engaging in research.

As stated above, the Petitioner did not initially claim to have conducted any medical research; his progress in this regard was evidently limited to enrolling in a master's program. The Petitioner's response to the RFE included information about research he had undertaken, but he submitted no evidence to show that this research was underway at the time he filed the petition.

The record, therefore, does not indicate that the Petitioner had made progress toward advancing the research element of his proposed endeavor as of the filing date, and the Petitioner cites no such evidence on appeal.

The last specified factor regarding the second *Dhanasar* prong concerns the interest of potential customers, users, investors, or other relevant entities or individuals.

The Petitioner cited only one piece of evidence in this regard. The Petitioner stated:

My knowledge of anatomy, physiology and pathophysiology would be very advantageous in the research setting. I would be able to assist with the daily preparation of the laboratory and the experiments. . . . I would easily be able to assist other physicians, based at academic hospitals, with their research for example evaluating the impact of a new drug on cardiac function during echocardiography.

I have already received interest in this type of work [from] the [] University of [] due to my qualification.

From the structure of the first quoted paragraph, we cannot determine the specific “type of work” the Petitioner meant in the second paragraph.

To corroborate his claim, the Petitioner submitted email printouts showing that the Petitioner contacted [] in March 2020, stating:

I am a qualified family physician . . . interested in pursuing a different career path. I would be honored if I could be considered for a job opportunity in a research setting. . . . Unfortunately, currently I do not have any experience in a lab environment. . . . I am willing to attend any courses necessary to obtain the skills required for the job opportunity.

I am hopeful that the research and laboratory experience would perhaps allow me to pursue a Ph.D. at the University in the future.

Would you perhaps be able to assist me with some guidance in regards to which research opportunities I might be able to apply for at the University?

Preferably in the Medical or Molecular and Cellular (Tissue) Biology fields.

In response, [] asked the Petitioner for “proof of [his] legal right to work in the U.S. without sponsorship.” The Petitioner answered that he “will unfortunately require sponsorship.” [] responded: “Due to our accreditation status, we are not able to sponsor work visas. We hope to have that opportunity in the future. Please keep a watch on our website for future developments.” [] response came from its Human Resources Department, not from any academic department or research laboratory. [] correspondence did not include any discussion of job opportunities, specific projects, or the Petitioner’s work.

In the denial notice, the Director stated: “The human [resources] representative did not confirm moving forward with employing the petitioner in a research or any other position. Therefore, the email is not sufficient evidence to show interest from relevant entities.”

On appeal, the Petitioner states that the Director’s failure to raise this issue in the RFE “robbed the Petitioner of the actionable ability to rectify any perceived issue or discrepancy.” The Petitioner does not identify any information or submit any evidence that he would have submitted if the Director had raised the issue in the RFE.

In that RFE, the Director did not state that the Petitioner had established the interest of potential customers, users, investors, or other relevant entities or individuals. The Director stated that the Petitioner could establish such interest by submitting “[l]etters from a government entity,” “[e]vidence that the beneficiary has received investment from U.S. investors” or “awards, grants, or other indications of relevant non-monetary support . . . from Federal, State, or local government entities,” and “[e]vidence demonstrating how the beneficiary’s work is being used by others.” The Petitioner

has not shown that the email communication with [] Human Resources Department fits any of these descriptions or has comparable evidentiary weight.

The Petitioner observes that “the email exchange . . . did not stipulate that [] was not interested in the endeavor, but merely that they were unable to hire the Petitioner at that time.” The burden of proof is on the Petitioner to affirmatively demonstrate eligibility. The limited scope of [] correspondence does not create a presumption that [] would otherwise have hired the Petitioner. There is no indication that [] had any knowledge of the Petitioner’s background or credentials apart from his self-description in the first message, in which he acknowledged that he had no research experience and may require further training in order to be eligible for a research position.

By way of comparison, the petitioner in *Dhanasar* “submitted detailed expert letters describing U.S. Government interest and investment in his research, and the record includes documentation that the petitioner played a significant role in projects funded by grants from” several federal government agencies. *Matter of Dhanasar*, 26 I&N Dec. at 892.

The Petitioner has not established interest in his proposed endeavor of the type contemplated in *Dhanasar*.

For the reasons discussed above, we agree with the Director that the Petitioner has not met the second prong of the *Dhanasar* national interest framework. The Director also concluded that the Petitioner had not met the third *Dhanasar* prong, but detailed discussion of that remaining prong cannot change the outcome of this appeal. Therefore, we reserve argument on the third prong.³

III. CONCLUSION

We agree with the Director that the Petitioner has not established that he is well positioned to advance the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.

³ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).