



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

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

In Re: 28400618

Date: OCT. 25, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a dental healthcare professional, 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 EB-2 classification. *See* 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, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that 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.

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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>1</sup>, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

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<sup>1</sup> *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 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 Director found that the Petitioner qualifies as a member of the professions holding 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to her proposed endeavor, the Petitioner initially indicated that she intends “to work as a healthcare professional in dentistry and give access to quality dental care to American patients.”<sup>2</sup> She stated: “I will also continue my career in the dental industry by entering the American market by opening my own laboratory that will specialize in the manufacturing of indirect bonding technique dental braces, and other state-of-the-art orthodontic appliances that will be available to patients and other orthodontists.” The Petitioner further asserted that she plans “to open a laboratory to make orthodontic appliances and indirect bonding guides individualized braces. The laboratory will generate jobs as the demand of equipment orders grows, and I will hire more technicians to perform the individualized indirect gluing technique.”

On appeal, the Petitioner indicates that she opened [REDACTED] 2022. She further explains that she signed “a contract with [REDACTED] in June 2022. After filing my case, [REDACTED] became manager of [REDACTED].” The Petitioner further states:

My company [REDACTED] has a contract with [REDACTED]. My contract with [REDACTED] consists of laboratory 3D scanning and computer work for orthodontic appliances and indirect bonding guides individualized braces. Design of segmented arches in 3D models and aligner treatment planning in 3D software which is approved by reviewing orthodontist, Dr. A-B-.

At Dr. A-B-’s clinic, I started to work closely with Dr. R-S-A-. . . . Dr. R-S-A-, current owner of the [REDACTED] brand, proposes me and my company a partnership to jointly develop [REDACTED] and thus become the second brand in the world market to offer Clear Aligners for the age group of 6 to 10 years old (besides Invisalign).

The Petitioner’s formation of [REDACTED] her company’s contract with [REDACTED] and her collaboration with Dr. R-S-A- all post-date the filing of the petition.<sup>3</sup> Eligibility, however, must be demonstrated at the time of filing the benefit request. See 8 C.F.R. § 103.2(b)(1), (12).

<sup>2</sup> The record includes a January 2020 “Employment Agreement” between [REDACTED] and the Petitioner offering her “the position of ‘Orthodontic Assistant and Clinical Consultant.’” As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we consider information about this position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* framework.

<sup>3</sup> The Form I-140 petition in this matter was filed in June 2021.

In response to the Director's request for evidence, the Petitioner submitted her business plan, entitled "Business Case [REDACTED]". This business plan includes industry and market analyses, information about her business proposal, costs and infrastructure projections, marketing strategies, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates employing five personnel, but she did not elaborate on this projection or provide evidence supporting the need for these employees.

The record includes information about the occupational outlook for dentists, orthodontic treatment, dental care health professional shortage areas, the projected supply of dentists in the United States, staffing shortages in the dental industry, the U.S. dental economy, the demand for healthcare workers in Illinois, and the top ten states for the highest demand for healthcare professionals. In addition, the Petitioner provided articles discussing future demand for dentists, the U.S. states most in need of dentists, the impact of the COVID-19 pandemic on the dental industry, the pandemic's effect on the supply of dental hygienists, the economic outlook and emerging issues in dentistry, and stagnant employment in the dental industry. She also submitted information about dentists in the United States; the global dental equipment market; science, technology, engineering, and mathematics (STEM) worker shortages; trends in the dental industry; the shortage of dentists in the United Kingdom; and the ways shortages in dentistry are prohibiting practices from meeting patient demand. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

Furthermore, the Petitioner provided letters of support from E-L-N-, A-B-, T-E-, R-V-M-, C-A-A-P-, M-C-P-, E-S-, R-S-A-, A-R-, F-X-V-, G-G-, M-M-S-J-, and J-A-S- discussing her orthodontics capabilities and experience. The Petitioner's skills, knowledge, and prior work in her field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner also submitted an "Expert Opinion Letter" from A-B-, associate professor at [REDACTED] College, in support of her national interest waiver. A-B- contended that the Petitioner's proposed work is of national importance because her generic occupation of dentist and the industry in which she works stand to contribute to our nation's healthcare system. For example, A-B- stated that "[d]ental health has national importance as it is linked to the overall health of individuals." The issue here, however, is not the national 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." *Id.* at 889. The letter from A-B- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in her field, U.S. public health benefits, or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of her proposed endeavor. The Director stated that the Petitioner had not demonstrated that her undertaking stands to have broader implications in the field, significant potential to employ U.S. workers, or other substantial positive economic effects.

In her appeal brief, the Petitioner asserts that her statements and documents relating to her proposed endeavor reflect “a nationally important and substantially meritorious plan of contributing her professional talent in the United States, in the field of dentistry/orthodontics.” She contends that her undertaking has “the potential to improve the oral health of thousands of children each year. Through her company, she has thus already begun building her broad network of clinics to serve, as well as her initiative of bringing an innovative and beneficial product to the American market.” In addition, the Petitioner argues that the evidence shows “the value that [the Petitioner] stands to bring – and in fact, is already bringing – to the U.S. by way of [redacted]” She also claims that her indirect bonding technique “can be very impactful across [redacted] national clinics.”

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.” 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.* 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.

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. While the Petitioner’s statements reflect her intention to provide 3D indirect bonding laboratory work and orthodontic services, 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. *Id.* at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her company and its business partners or clientele to impact her field, the dental industry, U.S. public health, or our country’s economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not demonstrated that her company’s future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that her company has growth potential, she has not presented evidence indicating that the benefits to the regional or national economy resulting from her undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her endeavor “will generate jobs,” she has not offered sufficient evidence that the area where her company will operate is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity.

For the aforementioned reasons, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision,

the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. 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 conclude that she has not established she is eligible 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.