



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

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

In Re: 28623410

Date: OCT. 31, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a pharmacist, seeks second preference 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 immigrant 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the job offer requirement, and thus of a labor certification, is in the national interest. We dismissed a subsequent appeal, where we found that the Petitioner qualifies for the classification as an advanced degree professional.<sup>1</sup> We also withdrew the Director's finding that the proposed endeavor lacks substantial merit and concluded that the Petitioner established that her endeavor meets this requirement. However, we determined that she had not overcome the Director's adverse conclusion regarding her eligibility for a national interest waiver. In making this determination, we applied the analytical framework set forth in *Matter of Dhanasar* for adjudicating national interest waiver petitions. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Namely, we concluded that the Petitioner did not establish that her endeavor has national importance under the first prong of the *Dhanasar* framework.<sup>2</sup> The matter is now before us on a motion to reconsider.

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). Upon review, we will dismiss the motion.

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<sup>1</sup> We noted that the Director did not address the threshold question of the Petitioner's eligibility for the underlying EB-2 immigrant classification and determined that the Petitioner qualifies for the classification as an advanced degree professional based upon her Doctor of Pharmacy degree from the University [redacted] Texas.

<sup>2</sup> However, we declined to reach a determination as to whether the Petitioner meets the remainder of the second and third prongs under the *Dhanasar* framework, citing the national importance standard of the first prong as being dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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).

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

As noted in our prior decision, evidence of the specific endeavor that the Petitioner would pursue included two pharmacy job offer letters offering her part-time employment as a pharmacy consultant. In response to the Director's RFE, she also submitted evidence regarding her project '[REDACTED]' a proposed telepharmacy consulting service. In our prior decision, we pointed to various evidentiary deficiencies as the basis for concluding that the Petitioner did not establish that her endeavor has national importance. Although we acknowledged the Petitioner's submission of studies and articles discussing the impact of telepharmacy on health and the economy, we determined that the studies and articles do not discuss the Petitioner's proposed endeavor specifically. We also addressed an impact analysis report about the Petitioner's '[REDACTED]' project and found that the report did not adequately explain the basis for the anticipated revenue figures it contained nor establish that the project's potential economic impact would rise to the level of a "substantial positive economic effect" that would be commensurate with national importance. *Matter of Dhanasar*, 26 I&N Dec. at 890. Next, we recognized the Petitioner's submission of support letters praising her work, but we pointed out that the letters did not discuss the Petitioner's '[REDACTED]' project or offer a persuasive explanation for how the Petitioner's work will have national or global implications within the telepharmacy field. Ultimately, we determined that the record lacks evidence corroborating the claims made in the letters and does not establish that the Petitioner has a specific telepharmacy innovation or method that she has researched, developed, and can implement on a broad scale that would be commensurate with national importance. In sum, we discussed the Petitioner's supporting evidence and explained how the evidence falls short of meeting the national importance requirement under the *Dhanasar* framework.

On motion, the Petitioner makes vague claims about the propriety of our decision, asserting that it is "volatile"; she contends that "the documentation of record demonstrates beyond preponderance the national importance of the proposed endeavor" and that a conclusion to the contrary "is an abuse of discretion and unwarranted by the facts at bar." The Petitioner also reiterates portions of the USCIS Policy Manual and our decision in *Matter of Dhanasar* where the issue of national importance is addressed, arguing that the proposed endeavor has already been shown to have "realized and prospective impact which enables and strengthens the national agenda." In essence, the Petitioner disagrees with our discretionary determination and asks that we perform "a plenary review of the documentation of record," even though we conducted a de novo review during the appeal process.

The record here shows that we adequately considered the evidence and subsequently incorporated our findings in a comprehensive analysis where we explained the deficiencies that led to our conclusion that the Petitioner did not establish that her endeavor satisfied the national importance prong under the *Dhanasar* framework.

The Petitioner also asserts that we misconstrued the proposed endeavor, highlighting that the endeavor "seeks to provide necessary medicine and related education to underserved communities through telehealth innovations such as direct to consumer telepharmacy consulting work." The Petitioner did

not establish that this iteration of the endeavor is materially different from our description of the endeavor as stated in the prior decision. In our prior decision, we acknowledged the Petitioner's intent to work as a pharmacist providing "telepharmacy and medication delivery innovations" and also reiterated the Petitioner's definition of telepharmacy as a subspecialty of telemedicine that uses "telecommunications in delivering pharmaceutical services to patients living far from traditional services." The Petitioner has not established that we erroneously misconstrued the proposed endeavor or that the unsubstantiated error resulted in our unfavorable decision. Our decision noted that the evidence was not sufficient regarding a telepharmacy innovation or method that the Petitioner has researched, developed, and now proposes to implement on a broad scale. The record further shows that while we readily recognized the merit of the Petitioner's endeavor and the potential myriad benefits of increased access to telepharmacy, we concluded that the endeavor as described by the Petitioner in the record was not shown to have health-related impacts rising to the level of national importance.<sup>3</sup> In other words, we did not dismiss the appeal because we misconstrued the endeavor, or did not consider it significant, but rather because we determined that the breadth of the endeavor's impact as proposed and evidenced in the record was not shown as rising to the level of a "substantial positive economic effect" that would be commensurate with national importance. *Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 369.

The Petitioner goes on to argue that we "fail[ed] to address the national importance of the proposed endeavor" and placed undue emphasis on the Petitioner's résumé. Based on a review of the decision, we disagree with this assertion. Our prior decision does not mention the Petitioner's résumé. Although we mentioned support letters that lauded the Petitioner's pharmaceutical knowledge and experience and described her past research projects, we explained that evidence of the Petitioner's knowledge and skills is more relevant to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether she is well-positioned to advance it. *Matter of Dhanasar*, 26 I&N Dec. at 890. We clarified that the endeavor itself is the focus of the national importance element in the first prong of the *Dhanasar* framework. We then offered a detailed discussion explaining how the support letters were deficient in specifically addressing national importance. A review of our prior decision shows, the primary portion of our decision was devoted to discussing documents that the Petitioner submitted and explaining how those documents are insufficient in establishing that the proposed endeavor has national importance.

In sum, we reiterated the relevant facts and evidence in the record and provided a comprehensive analysis where we applied the law and USCIS policy and explained how we arrived at the adverse conclusion. While we recognize the substantial merit of the proposed endeavor, given the deficiencies described above, the Petitioner has not established that our decision dismissing the appeal was based on an incorrect application of law or policy at the time we issued our prior. Because the Petitioner has not met these requirements of a motion to reconsider, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion to reconsider is dismissed.

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<sup>3</sup> We noted, in part, that the impact report "does not estimate an anticipated number of patients that may be reached, telepharmacy services that may be implemented, pharmacists that may be trained, nor otherwise quantify the potential health-related impacts of the project. As such, we are not able to evaluate whether the health-related impacts of the project may rise to the level of national importance."