



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

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

In Re: 28079696

Date: SEP. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a dentist, 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). 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 a 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.

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.” *Id.* 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.²

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record supports that conclusion. The remaining issue to be determined on appeal 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.

The Petitioner intends to provide dental services in the United States. According to a cover letter initially submitted with her petition, the Petitioner describes her work as “examining, diagnosing, and dealing with diseases, injuries, and malformations of teeth and gums.” A business plan also initially included with the petition describes the Petitioner’s intent to open a dentistry in Florida, in which she will serve as the company’s chief executive officer.

The Director sent a request for evidence (RFE) requesting, in part, that the Petitioner clarify her proposed endeavor and submit evidence to demonstrate its substantial merit and national importance. In response to the RFE, the Petitioner submitted a second copy of her business plan and a cover letter that reiterates her intention to work as a dentist. The Director determined that the record did not establish that the Petitioner’s proposed endeavor has substantial merit or national importance. The Director pointed to contradictions in the record concerning the Petitioner’s intended occupation; the decision states that it is unclear whether the Petitioner “intends to work as a Dentist, Medical Scientist/Researcher,³ and/or Entrepreneur.” For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the substantial merit or national importance of her endeavor in order to establish her eligibility under the first prong of the *Dhanasar* analytical framework.

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

On appeal, the Petitioner submits a brief in which she asserts that USCIS “erroneously denied” the petition and “imposed novel substantive and evidentiary requirements beyond those set forth in the regulations.” The Petitioner, however, does not identify any unusual requirements imposed, nor does the Petitioner specify how the Director erred or what factors in the decision were erroneous.⁴ The Petitioner also contends, without further explanation, that the Director applied a stricter standard of

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ We note that, in response to the RFE, the Petitioner’s cover letter clarified that she did not intend to work as a medical scientist or researcher.

⁴ An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. See 8 C.F.R. § 103.3(a)(1)(v).

proof than that of preponderance of the evidence⁵ and “did not give due regard” to the evidence submitted. The Petitioner’s brief reemphasizes her intention to “continue her career in the United States as a **Dentist**.” (Emphasis in the original.) The brief provides the following explanation of her endeavor:

[T]he Appellant’s proposed endeavor is national in scope, as her professional activities relate to a matter of *national importance* and *impact*, particularly because they generate substantial ripple effects upon key **health** activities on behalf of the United States. Her proposed endeavor is a vital aspect of U.S. **dental** operations and productivity—which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy. Thus, it is clear that her field of proposed endeavor does contribute significantly to the US health industry and therefore does have substantial merit. [Emphases in the original.]

In determining national importance, the relevant question is not the importance of the 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. Further, 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. 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.

While the Petitioner’s business plan describes her intention to found and operate a company offering dental services to patients, statements in the record offer descriptions of her endeavor that are not consistent with the proposal outlined in the business plan. Although the business plan specifies that the Petitioner will work as the company’s chief executive officer, statements throughout the record repeat her intention to work as a dentist. The record also includes allusions to the provision of services not described in the business plan or other documentation; a cover letter submitted with the RFE response provides the following:

[The Petitioner’s] proposed endeavor is national in scope, and will have broader implications within her field, due to the ripple effects of her professional activities. For instance, [the Petitioner] plans to build upon her career experiences and offer her specialized oral rehabilitation and dentistry services to U.S. entities that wish to improve their client’s overall health. Her proposed endeavor will impact more than just her served companies, and instead has the potential to reach the patients, families and affiliates of said patients, based on [her] guidance and practices, who today are located all over the [world].... [The Petitioner] is able and willing to help combat...serious health issues—which can include helping U.S. clinics organize their

⁵ See *INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place).

structures to ensure the treatment of all patients in need of dental services, or consulting on various treatments for numerous dental issues.

The Petitioner has provided several inconsistent descriptions of her endeavor; she states that she intends to work as a dentist, to open a dentistry in which she will serve as the chief executive officer, and to offer advisory services to “U.S. entities” and “U.S. clinics.” Although the RFE requested that the Petitioner clarify her proposed endeavor, she did not take the opportunity to do so in responding to the RFE. A petitioner must resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies. Doubt cast on any aspect of a petitioner’s evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Because we cannot discern what specific endeavor the Petitioner intends to pursue, we conclude that the Petitioner has not established by a preponderance of the evidence that she has proposed an endeavor of substantial merit or national importance.

Even if we were to consider the Petitioner’s endeavor to be the pursuit described in her business plan—to develop and operate a dental practice⁶—the record does not establish that the Petitioner’s proposal rises to the level of national importance. To evaluate whether the Petitioner’s proposed endeavor to create a company satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. Although the Petitioner’s business plan reflects her intention to use her years of experience in the field of dentistry to operate her own dental practice, 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. *See Dhanasar*, 26 I&N Dec. at 893. Here, we conclude that the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond her employees and to impact either the dental industries more broadly at a level commensurate with national importance.

In addition, the Petitioner has not demonstrated that her intent to operate a dental practice has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. Specifically, she has not shown that her business activity stands to provide substantial economic benefits to Florida or to the United States. The business plan does not demonstrate that the benefits to the regional or national economy resulting from the Petitioner’s endeavor would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. The Petitioner cites a shortage of dentists in the United States as a positive impact because her facility will employ dentists; however, it is not clear how the employment of individuals at a single facility in an occupation in which there is a general national shortage would render the proposed endeavor nationally important under the *Dhanasar* framework. In addition, although the Petitioner asserts that her company will hire U.S. employees, she has not provided evidence to show that she would employ a significant population of workers in the region, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. The Petitioner states that by the fifth year of operation, her facility will have 80 employees and a revenue totaling \$6,307,729.58, and that she anticipates reinvestment into the company from retained yearly earnings.

⁶ We acknowledge that the provision of dental services has substantial merit; however, as detailed above, the Petitioner has not established substantial merit in this case because she has not specifically identified her proposed endeavor.

The growth forecast figures, however, do not appear to originate from objective sources, and a table in the business plan depicting the Petitioner's initial investment of \$350,000 is not supported by documentation to demonstrate the availability or existence of those investment funds. While a statement in the record references this investment as originating from the Petitioner's own personal funds, the documentation of these funds consists of a personal affidavit from the Petitioner attesting to her self-employment as a dentist and a letter from a colleague describing her work. Absent probative evidence to show the realistic potential of the business to operate at all, it is not evident that the company will generate revenue to create jobs, to expand, or to otherwise notably impact the economies of the cities in which it intends to operate. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 at 376. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's company would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. The Petitioner has not demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Because the Petitioner has not specifically identified her proposed endeavor, she has not established the substantial merit or national importance of a proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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

The Petitioner has not met the requisite first and prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.