



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

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

In Re: 16150891

Date: JUL. 8, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an audiologist and speech pathologist, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, 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 Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s 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.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

The Director did not make a determination regarding the Petitioner's eligibility as either a member of the professions holding an advanced degree or as an individual of exceptional ability. The record reflects that the Petitioner possesses the foreign equivalent of an advanced degree. Accordingly, the Petitioner qualifies as a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(2) and (3)(i)(A).⁴

B. National Interest Waiver

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 agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating:

I intend to continue using my expertise and knowledge in the field of audiology, speech pathology and healthcare by continuing my career as an Audiologist in the United States, providing my services to hospitals, nursing schools, medical clinics, home healthcare businesses, and wherever I can help alleviate the severe shortage of Audiologists

. . . .

My career plan in the United States is to work with a health care facility to provide expert advice and treatment to patients

In response to the Director's request for evidence (RFE), the Petitioner offered an updated statement indicating:

I intend to continue using my expertise and knowledge, gained through 13 years of professional experience, to work as an Audiologist, providing significant contributions to the treatment of hearing and speech-related pathologies for the betterment of societal and economic wellbeing in the United States

³ *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ As she meets the classification as a member of the professions holding an advanced degree, a determination regarding the Petitioner's classification as an individual of exceptional ability is moot.

....

Specifically, I plan to promote significant benefits to the U.S. health and communication treatment through my prospective business endeavor, [REDACTED] [REDACTED] a center through which I will provide outpatient services and Audiology treatment with a particular focus on dysphasia, or swallowing disorders, which disrupt quality of life and also serve as an indicator for morbidity in the medical setting.

Additionally, I will continue to support U.S. business and educational institutions with my expertise in Audiology and Speech-Pathology, to continue my impact in developing communication skills for those impaired in that area through the U.S. population and particularly in children

The Petitioner maintains on appeal that her “endeavor aims to actively apply her expertise as an Audiologist and Speech Pathologist, particularly in the treatment of patients with communication skills, to enhance the population’s health,” and “[h]er proposed endeavor strictly relates to national urgencies and concerns, such as audiologist’s contributions to the U.S. healthcare system, as well as to the enhancement and improvement of Americans’ health.” The Director determined that the Petitioner demonstrated the substantial merit of her proposed endeavor, and the record supports that conclusion.⁵ For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance of her proposed endeavor.

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. Here, the Petitioner must demonstrate the national importance of her specific audiology or speech pathology services rather than the national importance of the overall positions or fields or the wide range of healthcare settings in which she intends to work. 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.

In her appeal brief, as well as throughout this proceeding, the Petitioner emphasizes that she is “a multiskilled professional, with highly qualified experience and expertise in the field.” The Petitioner’s experience and abilities 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.

⁵ The record includes documentation regarding the job market for audiologists in the United States, including their descriptions, roles, and responsibilities.

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. Although the Petitioner asserts that "[h]er proposed endeavor presents extensive national benefits to the United States, as it has national implications within the healthcare field; will broadly enhance societal welfare; and, impacts healthcare matters that federal and state governments have described as having national importance," she has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of her specific proposed endeavor rises to the level of national importance.⁶ Instead, the record contains evidence regarding general information relating to audiologists, speech therapists, and speech-language pathologists. 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, the record does not show that the Petitioner's proposed endeavor of providing audiology and speech pathology services stand to sufficiently extend beyond her potential patients, to impact the audiology and related fields or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not established 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. While she references a "steep shortage of qualified professionals in the field in the U.S.," such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. In addition, the Petitioner did not demonstrate how providing her services would somehow influence those figures. 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 the benefits to the U.S. regional or national economy resulting from the Petitioner's services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed endeavor 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. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

⁶ As indicated above, in response to the Director's RFE, the Petitioner asserted her intention to open an audiology treatment service and presented a business plan. The Petitioner, however, did not make this claim at initial filing. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Regardless, it is important to acknowledge that *Dhanasar* provided examples such as "endeavors related to research, pure science, and the furtherance of human knowledge" which "may qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States." The Petitioner did not establish that her proposed audiology business is similar to any of the listed endeavors, such that she would meet the national importance portion of the first prong. In addition, the Petitioner did not show that her company's projected future staffing levels of 6 – 7 positions or revenues would provide substantial economic benefits to an unidentified location in Florida or the United States, nor did she demonstrate that the business would be situated in an economically depressed area or that she would employ a significant population of workers in that area.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated that 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.