



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

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

In Re: 30625965

Date: APR. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse assistant, seeks classification as an individual of exceptional ability. 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 is an individual of exceptional ability or that a waiver of the job offer requirement is in the national interest. The matter is now before us on appeal pursuant to 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 immigrant 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 eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither 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 a matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

- 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 Director determined that the Petitioner did not establish that she is an individual of exceptional ability and as such did not establish that she qualifies for the EB-2 classification.² Regarding the Petitioner's request for a national interest waiver, the Director found that the Petitioner demonstrated the substantial merit of the proposed endeavor but did not demonstrate the endeavor's national importance, that she is well-positioned to advance it, or that, on balance, waiving the job offer requirement would benefit the United States.

On appeal, the Petitioner asserts that she qualifies as an individual of exceptional ability and that she has established her eligibility for a national interest waiver under each of the three *Dhanasar* prongs. Because, as we discuss below, we conclude that the Petitioner has not demonstrated the national importance of the proposed endeavor, we need not reach the question of whether she qualifies for the EB-2 classification or the second or third prongs of the *Dhanasar* framework and we reserve our opinion regarding those issues. *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). The Petitioner's proposed endeavor is to work as a nurse assistant.

In determining that the Petitioner did not establish the national importance of the proposed endeavor, the Director noted that in this determination USCIS focuses on the specific endeavor that the individual proposes to undertake, rather than the importance of the field, industry, or profession. The Director concluded that the record did not establish that the proposed endeavor stands to sufficiently extend beyond the Petitioner's employer or clientele at a level commensurate with national importance.

On appeal, the Petitioner submits a brief in which she primarily restates the same claims made before the Director regarding the national importance of the proposed endeavor. In support of the endeavor's national importance, the Petitioner emphasizes her specialized knowledge and experience in the occupation, the importance of nurse positions to the healthcare system and of the healthcare industry overall, the shortage of qualified workers in the occupation, the economic burden associated with chronic illnesses, and the presidential administration's national initiative related to cancer prevention and early detection.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing

¹ *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and the Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

² The Petitioner does not claim to qualify for the EB-2 classification as an advanced degree professional.

processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Upon de novo review, we agree with the Director that record does not establish the national importance of the proposed endeavor. While the Petitioner claims that she has significant experience and knowledge in her field, this claim does not help demonstrate the potential prospective impact of the proposed endeavor. Evidence of a petitioner's skills, knowledge, and record of success generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether they are well-positioned to advance it. *Id.* The Petitioner must establish that her specific endeavor—to work in the healthcare field as a nursing assistant—has national importance under *Dhanasar*'s first prong. While a petitioner's achievements in the field may be relevant in some circumstances in establishing the potential prospective impact of their endeavor, the Petitioner has not explained how her experience or knowledge demonstrate that the endeavor has the potential to impact the U.S. healthcare system or the economy at a level commensurate with national importance.

Regarding the Petitioner's claims about the importance of the nursing occupation and of the healthcare industry itself, we agree with the Director that, in determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." *Id.* at 889. Although the Director stated this deficiency in the decision, on appeal the Petitioner restates these claims without addressing or overcoming the Director's conclusion they do not help demonstrate the national importance of the Petitioner's specific, proposed endeavor.

As to the Petitioner's claims regarding the shortage of qualified workers in the healthcare field, the economic burden of chronic illnesses and the economic benefits of improving the health of the U.S. population, and the importance of cancer prevention and early detection, we conclude that these claims similarly do not help establish the national importance of the Petitioner's endeavor. The record does not contain evidence that would support the conclusion that the Petitioner's work as a single nurse assistant would lessen the shortage of workers or improve healthcare in the United States on a scale commensurate with national importance. While the Petitioner's work may help improve the health of her own patients, the record does not demonstrate that this will result in any meaningful impact on the health of the U.S. population in general or on cancer prevention and detection specifically.

Overall, the Petitioner references very little specific evidence from the record on appeal and instead simply states broad claims about the national importance of the endeavor, asserting that her experience "holds immense significance for American healthcare, patient well-being, job creation, and economic growth" and that her contributions have the potential "to make a profound and lasting impact on society." But these general, conclusory statements are made without sufficient information or evidence in the record to support them and are, therefore, insufficient for the Petitioner to meet her burden of proof. The Petitioner has not demonstrated that her work as a nursing assistant will differ from the services offered by others in the field, offer improvements or new approaches that are

replicable through the field, or otherwise would stand to broadly impact the healthcare industry or the economy beyond those patients directly served.

The Petitioner has not established the national importance of the proposed endeavor, as required by the first prong of the *Dhanasar* framework; therefore, she has not demonstrated eligibility for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to her qualification as an individual of exceptional ability and the second and third *Dhanasar* prongs but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prongs or her eligibility for the EB-2 classification. *See INS v. Bagamasbad*, 429 U.S. at 25 (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 the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.