



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

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

In Re: 30644590

Date: APR. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dentistry specialist, seeks classification as a member of the professions holding an advanced degree or 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 employment based second preference (EB-2) 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. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding the record did not establish that a waiver of the required job offer, and thus of a labor certification, would be 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 petition 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.

Whilst 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). *Dhanasar* states that USCIS may as a matter of discretion

grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen 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 noncitizen 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 noncitizen. To determine whether the noncitizen 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, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors 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.

II. ANALYSIS

The Director concluded that the Petitioner's substantially meritorious proposed endeavor did not rise to a level of national importance as required by the first prong of *Dhanasar*. The Director determined the record established that the Petitioner was well positioned to advance the proposed endeavor. And the Director concluded that on balance of applicable factors, a waiver of the requirement of a job offer, and thus a labor certification, would not be beneficial to the national interest.

A. The Proposed Endeavor

The Petitioner previously worked as an orthodontist and proposed to serve in a simultaneous "dental consultant," "dental professor/educator," and "dental clinic" operator endeavor. The Petitioner proposed to function as a "dental consultant" collaborating with dentists desiring orthodontia consultative services whilst also providing advice about dental office marketing, office management, human resources, and supplies. The Petitioner also intended to "[s]imultaneously work towards the validation of [their dental] license in the United States with the intent of opening [their] own clinic."

The Petitioner asserted that their proposed endeavor would address an issue of national importance because they would provide treatment for dental ailments to populations and communities who “need it most” and “train the next generation of dental practitioners” in the United States. They also contended that their prosecution of their endeavor would prompt licensed dentists in the United States to “improve their techniques,” “address [an] alarming shortage of professors at American dental schools,” and upon acquisition of a dental license establish dental clinics “in regions that lie far outside urban centers” providing “surgical and non-surgical services for widespread, common oral health issues to help address the distressing state of oral health for millions of Americans that reside outside of urban zones.” In response to the Director’s request for evidence (RFE) the Petitioner elaborated that “[p]oor oral health can lead to a range of health problems” including “heart disease” which their endeavor would play a critical role in mitigating, as well as increasing employment in the areas “outside of urban zones” in which the Petitioner seeks to establish their dental clinics whilst reiterating their intention to consult with licensed dentists and “train the next generation of professionals.

On appeal, the Petitioner contends that the Director erroneously denied the petition. The Petitioner asserts they meet all applicable prongs under the *Dhanasar* framework and merit a discretionary waiver of the job offer, and thus the labor certification, in the national interest. The Petitioner specifically assigns error by contending the “independent documentary evidence – the industry reports and articles” they submitted demonstrated the national importance of their endeavor. And they contend that the same evidence in combination with their statement filed initially with the petition and in response to the RFE demonstrates that their proposed endeavor would “stimulate job growth directly” and have “other economic impacts” based on their endeavor’s “significant potential to employ U.S. workers.” The Petitioner also reemphasizes their intention to serve as “an instructor to train students and professionals in the dentistry field, particularly orthodontics specialists.”

B. The Proposed Endeavor’s Substantial Merit and National Importance

We will now address whether the Petitioner has established that a waiver of the job offer requirement, and thus of the labor certification, would be in the national interest. We agree with the Director’s conclusion that the Petitioner has not sufficiently demonstrated the national importance of their substantially meritorious endeavor under the first prong of the *Dhanasar* analytical framework. To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that their proposed endeavor has both substantial merit and national importance. This prong of the *Dhanasar* framework 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.

Although the evidentiary standard in immigration proceedings is the lowest preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner’s burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *see also* the definition of burden of proof from *Black’s Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form

of documents, testimony, etc. that adheres the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

The evidence and argument the Petitioner introduced into the record does not help them carry their burden of production and persuasion. The Director concluded the Petitioner's proposed endeavor, which requires the performance of the work of a dental professional, had substantial merit. But the Petitioner's endeavor did not rise to a level of national importance because the record did not adequately demonstrate the potential prospective impact of the proposed endeavor rose to a level of national importance. The Director concluded that the record did not sufficiently establish the proposed endeavor's broader impacts to a level commensurate with national importance.

As we stated above, the Petitioner proposed to function as a "dental consultant" collaborating with dentists desiring orthodontia consultative services whilst also providing advice about dental office marketing, office management, human resources, and supplies. The Petitioner also intended to "[s]imultaneously work towards the validation of [their dental] license in the United States with the intent of opening [their] own clinic." The Petitioner asserted that their proposed endeavor would address an issue of national importance because they would provide treatment for dental ailments to populations and communities who "need it most" and "train the next generation of dental practitioners" in the United States.

To satisfy the *Dhanasar* analytical framework's first prong, the Petitioner must demonstrate that their proposed endeavor has both substantial merit and national importance. This prong 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. The record here supports the Director's determination that the Petitioner's proposed endeavor, which aimed to develop the field of dentistry in the United States by addressing gaps in access to dental care in the United States and promoting general oral hygiene, had substantial merit.

But, when evaluating national importance, we shift the focus from the importance of the field or industry within which a petitioner will work to "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.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. In support of their claim that they can satisfy the *Dhanasar* analytical framework's first prong, the Petitioner provided articles from major media, professional, and industry publications that addressed the lack of affordable dental care and dental insurance in the United States, nationwide and regional labor shortages in the dental health profession, inequalities in the availability of dental care across different demographic populations, and serious health outcomes that can be linked to a lack of adequate dental care.

It is unclear from the evidence in the record that the work of a single healthcare professional in the field of dentistry, irrespective of that proposed endeavor's success or failure, would have a significant impact on the field beyond its immediate sphere of influence. The evidence in the record does not highlight how the work of one professional could have broader implications that address the shortage of professionals the Petitioner asserts would be addressed by their function in their proposed endeavor. And if in fact these shortages can be addressed by adding additional able, willing, qualified, and available international workers like the Petitioner, they would be better addressed through the U.S. Department of Labor's (DOL) labor certification process. The labor certification process permits U.S. employers to test the labor market to document the lack of able, available, qualified, and willing U.S. workers for positions with U.S. employers.

And the record contains insufficient evidence to support the positive economic effects the Petitioner expects their proposed endeavor to realize. The Petitioner roots the potential positive effects of their unrealized dental clinic in its potential for job creation and tax revenue generation. But the record contains insufficient documentation to support or even describe job creation of any significance such that it rose to a level commensurate with national importance. Moreover, the Petitioner has not identified where they intend to establish their endeavor, which impedes an evaluation of whether the proposed job creation would address employment in economically depressed areas. The record is similarly silent about the other potential positive economic effects identified by the Petitioner, such as tax payments, which inhibits an evaluation of whether the Petitioner's indicated benefits from taxation rise to the level of national importance.

The Petitioner also indicated in the record that their hiring and training plans would lead to knowledge proliferation in the field of dentistry. This dental knowledge proliferation is akin to teaching activities. In *Dhanasar*, we considered a petitioner's teaching activities and concluded that teaching activities do not rise to the level of having national importance because they do not impact a field of endeavor more broadly than the immediate effect or influence on the cohort receiving the teaching. *See Dhanasar*, 26 I&N Dec. at 893. The record does not adequately support that the Petitioner's dental knowledge proliferation through their hiring and training plan will have an impact on the practice of dentistry in the United States. The record does not have a cognizable or detailed plan for reaching an audience wider than the individuals it will purportedly hire and train in the future.

USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the submission of letters or opinion statements from experts supporting the petition is not presumptive evidence of eligibility. *Id.* The Petitioner submitted an expert opinion statement. But the opinion statement did not illustrate how the Petitioner's proposed endeavor rises to a level impacting national importance. The writer's opinion focused on the Petitioner's ability and achievement when rendering their opinion. For example, the writer cited to the Petitioner's "knowledge and expertise in dentistry" to contend they would contribute to "societal welfare in the United States. But missing from this assertion is any mention of the Petitioner's proposed endeavor. As we stated previously the first prong focuses on the proposed endeavor. So, a petitioner's ability and achievement are not relevant considerations to evaluate the national importance of the proposed endeavor. The writer does state that the Petitioner's "proposed endeavor also impacts a matter that a government entity has described as having national importance" namely tooth decay. But the writer's opinion does not sufficiently describe how addressing the dental ailments of the

Petitioner's anticipated patient population would impact the minimization of tooth decay on a level commensurate with national importance. The writer does not venture much further from their description of the Petitioner's ability and achievement to evaluate the Petitioner's specific endeavor and how it can have a prospective positive impact nationally or globally or from the broader implications of its specific contributions to the provision of dental services in dental underserved areas. Nor does the writer sufficiently describe any positive economic impacts. Or in other words, the author does not articulate the potential prospective impact of the Petitioner's endeavor in a manner such that a meaningful evaluation of the proposed endeavor's potential prospective impact can be made to determine if it rises to a level of national importance.

The manifest thrust of the Petitioner's claim of eligibility for the act of discretion to waive the requirement of a job offer, and thus a labor certification, in the national interest comes from the Petitioner's claims regarding their profession's importance, their past career as a dentist in their home country, and their dedication to their field. But these attributes, critical as they may be for an endeavor's success, are not germane to the question of whether a proposed endeavor elevates to a position of national importance. We are not concerned with the individual petitioner when evaluating the first prong of the *Dhanasar* analytical framework; we are focused on the petitioner's proposed endeavor. The success of the endeavor, or attributes that could tend to make the endeavor more successful, are consequently not as important as determining whether the proposed endeavor itself stripped away from a petitioner, has attributes that would highlight the prospective positive impact of its broader implications or positive economic effects rising to a level of national importance.

So, we conclude that the Petitioner has not established that their proposed endeavor is of national importance.

C. Well-Positioned to Advance the Proposed Endeavor

Since the Petitioner did not demonstrate the national importance of their proposed endeavor, the resolution of that issue by itself requires dismissal of their appeal. But since the Director's decision made specific conclusions about the Petitioner's eligibility under *Dhanasar's* second prong, we will discuss whether the Petitioner is well positioned to advance the proposed endeavor.

We withdraw the Director's conclusion that the Petition is well-positioned to advance their proposed endeavor. We conclude the Petitioner has not sufficiently demonstrated that they are well positioned to advance their proposed endeavor under the second prong of the *Dhanasar* analytical framework. In evaluating whether a petitioner is well positioned to advance their proposed endeavor under the second prong of *Dhanasar*, we review (A) a petitioner's education, skill, knowledge, and record of success in related or similar efforts; (B) a petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing; (C) any progress towards achieving the proposed endeavor; and (D) the interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

As stated above, a petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Y-B-*, 21 I&N Dec. at 1142 n.3. The record contains evidence of the Petitioner's academic record, employment history, and professional recognitions. But simply having education, skills, and/or knowledge in isolation do not place a petitioner in a position to

advance their proposed endeavor. This is only one factor amongst many factors which are evaluated together to determine how well positioned a petitioner is to advance a proposed endeavor. And practice of the dental profession requires licensure from appropriate state boards of dentistry and passage of applicable examinations. The Petitioner states that they are not in possession of a license and are actively seeking to “revalidate” in the United States. So, it is not clear from the totality of the evidence in the record how an individualized consideration of the multifactorial analysis under *Dhanasar*’s second prong would demonstrate how well positioned the Petitioner is to advance their proposed endeavor.

Moreover, the recommendation letters the Petitioner submitted are not material, relevant, or probative evidence in the record of interest or support in the endeavor the Petitioner proposed in their petition. Whilst they speak generally of the Petitioner’s realization of certain objectives and skill in their field, they do not identify any recognition, achievements, or significant contributions to their field that tend to reflect that the Petitioner is well-positioned to advance their endeavor.

So, the Petitioner has not demonstrated with material, relevant, and probative evidence that they are well-positioned to advance their proposed endeavor.

III. CONCLUSION

Because the Petitioner has not met the requisite first or second prong of the *Dhanasar* analytical framework, we conclude that they do not merit a favorable exercise of discretion to waive the requirement of a job offer, and therefore a labor certification. We reserve the issue of whether the Petitioner demonstrated categorical eligibility under the EB-2 classification and eligibility under the remaining prong of the *Dhanasar* analytical framework respecting whether, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *See INS v Bagamasbad*, 429 U.S. at 25 and *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

In immigrant petition 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. The Petitioner has not met their burden of proof with persuasive material, relevant, and probative evidence which by a preponderance demonstrates the national importance of their proposed endeavor. So, their appeal must be dismissed.

ORDER: The appeal is dismissed.