



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

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

In Re: 28962875

Date: JAN. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur with asserted expertise in pharmaceuticals and the management of diagnostic laboratories, 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 is eligible 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.

“Advanced degree” is defined, in pertinent part, as any United States academic or professional degree or a foreign equivalent degree above that of a bachelor’s degree. A United States bachelor’s degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master’s degree. 8 C.F.R. § 204.5(k)(2).

“Profession” is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

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:

- 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. ELIGIBILITY FOR THE EB-2 CLASSIFICATION

Neither the notification of intent to deny issued by the Director nor the subsequent denial notice provided a determination of whether the Petitioner submitted sufficient evidence to show that he is a member of the professions holding an advanced degree. Therefore, we will reserve the issue of whether he qualifies for the underlying EB-2 classification. *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. NATIONAL INTEREST WAIVER

The Petitioner intends to own and operate a clinical analysis laboratory in the Florida region. The Petitioner’s business plan describes his endeavor as follows:

Committed to providing the best health care for Americans, [the Company] will compete in the general clinical analysis laboratory industry in Florida but will stand out by offering a higher service quality at an affordable price for its clients. . . .

. . . The Company will be a low-cost medical clinic for its patients so that they have access to a range of clinical exams, and afterward, to medical specialties. Despite the low cost, the service provided will be of the best quality, being a true solution to the problem that many have to deal with today: the lack of medical care for not having [favorable] financial conditions. It is worth mentioning that the laboratory will further evolve into a complete health clinic, where patients will have the comfort of running their exams and consultations in the same place.

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).

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

The Director concluded that, while the Petitioner's proposed endeavor has substantial merit, the Petitioner did not meet the first prong of the *Dhanasar* framework. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his endeavor to establish his 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 copies of documents currently present in the record, including a study of health screenings and the prevention of chronic disease progression. The record also includes reports and articles discussing such issues as the importance of diagnostics in health outcomes, the rising costs of healthcare, the significance of healthcare access to economic growth, and high vacancy rates for medical professionals. On appeal, in response to the Director's conclusion that the potential impact of his endeavor will be limited to serving the clientele of his own company and will not impact the field or industry more broadly, the Petitioner contends the following:

Access to diagnostic services, especially at fair prices to those who cannot afford a private health care insurance and have limited access to health care services allows for early diagnosis, prevention, and customized treatment for millions of patients in the United States. Early identification, prevention, and diagnosis of diseases and their risk factors improve patient outcomes and quality of life while also saving money for the healthcare system.... [The Petitioner's] proposed endeavor impacts more [than] solely his enterprise and clients, his proposed endeavor...will broadly enhance societal welfare by providing individuals with an affordable health care service that will allow the early detection of diseases that can severely impact the labor force productivity.

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 the Petitioner's 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to open a diagnostic laboratory offering affordable prices to patients in the [] region using a business model that he developed in Brazil, he has not offered

sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. The Petitioner references his successful business experience in Brazil as a model upon which he will develop his company in the United States. The record, however, does not include evidence of that business model or how it will be used to support the Petitioner's intention to grow the business to include additional clinical care services and to expand the business from Florida to other states. *Id* at 893. Here, we conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employees and patients to impact the healthcare industry more broadly at a level commensurate with national importance.

In addition, the Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. Though he has submitted a business plan discussing his plans to create and operate a low-cost medical clinic and laboratory, without more, the business plan does not sufficiently demonstrate that any 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.

For instance, the business plan offers a financial forecast which predicts revenues of \$875,000 by the third year of his company's operation. This and other projections in the business plan, however, are not accompanied by an explanation of the origins of the figures used in their calculation. In addition, while the Petitioner states his intention of investing \$176,989 to fund the first month of the company's operation, the record does not include evidence to demonstrate that these funds are available or how the business will be funded thereafter beyond investing anticipated revenues into the business. The Petitioner must support assertions with relevant, probative, and credible evidence, but he has not adequately done so here. *See Matter of Chawathe*, 25 I&N Dec. 369, 376.

Further, although the Petitioner states that the company will have twenty-two employees (including himself as the general manager) by its third year of operation, he has not provided evidence to show that he would employ a significant population of workers in the region, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. While the Petitioner has provided data demonstrating economic hardship in the region in which he intends to operate his business, it is not clear how an individual business of the size and scope described will impact that economic situation in a way that would positively affect the region. The Petitioner also cites a shortage of laboratory professionals in the United States as a reason for the positive impact of his endeavor because he will employ lab professionals; however, it is not clear how the employment of a few individuals in an occupation in which there is a general national shortage would render the proposed endeavor nationally important under the *Dhanasar* framework.

The Petitioner further cites research concerning the impact of healthcare costs on the economy and how affordable preventative care promotes a productive workforce. Although this may be an issue of significance in the economy generally, the issue is not relevant to whether the Petitioner's specific endeavor to own and operate a clinical laboratory rises to the level of national importance.

The Petitioner has not demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework. 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); *see also Matter of L-A-C-*, 26 I&N Dec. at 516.

III. CONCLUSION

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.