



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 31033639

Date: MAY 13, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a home health aide, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, or, in the alternative, as an individual of exceptional ability in the sciences, arts, or business. 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 Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not establish she is eligible for the underlying EB-2 classification as an advanced degree professional, or that she merits a discretionary waiver of the job offer requirement in the national interest. 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Once a petitioner demonstrates eligibility for the underlying classification, 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 the statute nor the pertinent regulations define the term “national interest,” Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that USCIS may, as matter of discretion,² 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.

Id. at 889.

II. ANALYSIS

The Petitioner proposes to establish a home care consulting business in the United States.

A. Member of Professions Holding an Advanced Degree

The Director determined that the Petitioner did not establish eligibility for the underlying EB-2 classification as a member of the professions with an advanced degree.³ In the decision, the Director explained that the Petitioner did not show that her foreign degree is in her intended specialty of home elder care. The Director also noted that the Petitioner did not show that the U.S. equivalent of her foreign degree is above that of a U.S. bachelor’s degree, or that it is the foreign equivalent of a U.S. bachelor’s degree followed by five years of progressive experience in her specialty. Upon de novo review, we agree with the Director that the Petitioner has not established eligibility for the underlying EB-2 classification.

The Petitioner submitted a diploma and an academic transcript from [REDACTED] indicating she was admitted in 1982 and was awarded qualification of biologist, entomologist, biological protection of plants in 1987. She also submitted an academic evaluation which briefly states that the five-year program “is a continuous curriculum incorporating undergraduate as well as graduate study. The diploma is, in level and intent, the academic equivalent of a bachelor’s degree and a master’s degree in biology from a regionally accredited institution in the United States.” Although the evaluation states the Petitioner’s foreign degree is the equivalent of a U.S. master’s degree, the Director determined this evaluation conflicted with the educational credentials for Uzbekistan as set out by the American Association of Collegiate Registrars and Admissions Officers’ (AACRAO)⁴ in the Electronic Database for Global Education (EDGE). Based on EDGE, the Director determined that

² See *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

³ The Petitioner does not claim eligibility for the EB-2 classification as an individual of exceptional ability in the sciences, arts, or business. See section 203(b)(2) of the Act.

⁴ AACRAO is a nonprofit professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries. See <http://www.aacrao.org/who-we-are>.

the Petitioner's education is not the foreign equivalent of a U.S. master's degree but is the foreign equivalent of a U.S. bachelor's degree.

While we do not agree with some of the Director's analysis of the evidence, we nevertheless agree with the Director that the Petitioner has not demonstrated that her diploma is the foreign equivalent of a U.S. master's degree. The Petitioner received her diploma from [redacted] which is in Uzbekistan. However, according to EDGE, Uzbekistan declared its independence from the Soviet Union in 1991, which is after the Petitioner received her diploma in 1987. Therefore, the Director's consideration of the Petitioner's diploma received in 1987 with the academic credentials for Uzbekistan are misplaced.

The academic evaluation submitted by the Petitioner indicates her academic records are from the "[f]ormer USSR (now Uzbekistan)" with a brief statement that the coursework included graduate level studies. However, the evaluation does not provide an analysis of the coursework or an explanation detailing its foreign country equivalency determination. Without further evidence, the Petitioner has not demonstrated her degree is the foreign equivalent of a U.S. master's degree.

The Director further determined that the Petitioner did not meet the requirements of an advanced degree professional because her degree, which is in biology with a specialization in entomology and biological protection of plants, is not related to her proposed area of specialty, home health care. Also, the Director determined that the Petitioner did not demonstrate having five years of post-baccalaureate experience in her field. The Director explained that the letters from her former employers conflicted with evidence in the record and therefore were not credible to establish the dates of her work history having five years of progressive experience. We agree that the employment letters do not show the Petitioner has five years of progressive experience in her field. While the letters indicate her job title was a home health aide, they do not detail her job duties. Therefore, we are unable to evaluate whether the Petitioner's experience is in her intended specialty of managing a home care consulting business.

In addition to the above, the Petitioner has not demonstrated she qualifies as a member of the professions. The regulation at 8 C.F.R. § 204.5(k)(1) states that an EB-2 visa petition may be filed on behalf of a noncitizen "who is a member of the professions holding an advanced degree." The regulation at 8 C.F.R. § 204.5(k)(2) defines a profession 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."

As pointed out in the Director's decision, the Petitioner did not complete portions of the petition, including Part 6, questions 2 and 3, which requests information about the Petitioner's proposed employment in the United States. While the Petitioner indicated she intends to have the job title of entrepreneur in elder care, she did not state the proposed standard occupation classification (SOC) code⁵ and indicated that the nontechnical job description of her proposed employment is included in attached documents.

The Petitioner's statement indicates she intends to establish and manage a home care consulting business focused on elder care. Her business plan explains that her business would "help health care

⁵ An SOC code is a statistical standard that federal agencies use to classify workers into job-related categories. See U.S. Bureau of Labor Statistics, "Standard Occupational Classification," <https://www.bls.gov/soc/>.

organizations improve their performance” by “[p]roviding much needed consulting on how to properly take care of the elderly.” Her statement indicates her business’ consulting services would include workshops and creating “peer-to-peer programs” to help “improve the wellness and psychological wellbeing [sic] of their elderly patients.” To support her petition, she provided letters from her former employers indicating she has worked as a home health aide.

According to the U.S. Department of Labor, the education requirement for “Home Health Aides” under SOC code 31-1121.00 occupations states, “usually require a high school diploma.” See U.S. Department of Labor, O*NET Summary Report for “Home Health Aides,” <https://www.onetonline.org/link/summary/31-1121.00>. Without further evidence, the Petitioner has not demonstrated that her intended occupation of managing a home care consulting business requires the minimum of a U.S. bachelor’s degree or its foreign equivalent, or that otherwise she is a member of the professions. Because the Petitioner has not established that she is a member of the professions under 8 C.F.R. 204.5(k)(2), she is not eligible to be classified as a member of the professions with an advanced degree. 8 C.F.R. § 204.5(k)(1).

For the above stated reasons, the Petitioner has not established she qualifies for the underlying EB-2 classification as a member of the professions with an advanced degree.

B. National Interest Waiver

The Director found that the Petitioner did not demonstrate meeting any of the three prongs of the Dhanasar analytical framework. The Director determined that the Petitioner did not show that her proposed endeavor has substantial merit or is of national importance; that she is well positioned to advance the proposed endeavor; or 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. Upon de novo review, we agree with the Director’s determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.⁶

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” *Id.*

The Petitioner provided an initial statement indicating she proposes to establish a “business as a consultant for home attendant services focused on the treatment of elderly patients’ [sic]” Her statement explains that her business would provide “effective approaches for these agencies to improve the wellness and psychological wellbeing of their elderly patients,” as well as workshops to help “create peer-to-peer program [sic], which could be implemented online, enriching the lives of their senior patients through life-balancing principles.” In her response to a request for evidence (RFE), the Petitioner submitted a business plan and additional documentation relating to her business. However, the Director did not consider these additional documents because they are dated after the

⁶ While we may not discuss every document submitted, we have reviewed and considered each one.

date of filing the petition, citing *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Instead, the Director only considered the Petitioner's initial statement and found that her proposed endeavor was not sufficiently defined to determine it has substantial merit.

Upon de novo review, the Petitioner has established that her proposed endeavor has substantial merit. The Petitioner's initial statement indicated her intent to establish a home health care consulting business, and the business plan and additional documentation included with her RFE response provided further explanation of her intent to establish her business. The business plan details the establishment of her business in [redacted] New York and her business' operations. Based on the foregoing, we withdraw the Director's finding that the Petitioner did not establish the substantial merit of her proposed endeavor.

The Director further found that the Petitioner did not establish her proposed endeavor would extend beyond her business at a level commensurate with national importance. Besides indicating her intent to be self-employed as an entrepreneur in the home elder care field, the Director determined the Petitioner did not sufficiently detail her "specific activities, goals, and/or projects" to demonstrate her proposed endeavor has the potential to broadly impact her field or the U.S. economy. Accordingly, the Director found that the Petitioner's proposed work to establish and manage a home care consulting business did not meet the national importance element of the first prong of the Dhanasar framework.

On appeal, the Petitioner contends that the evidence submitted meets the requirements under the Dhanasar framework. She argues that her proposed endeavor is of national importance because it will have a potential impact on the elder care field by helping to meet the increased demand for home care workers. She maintains her business plan sufficiently details how she intends to carry out her proposed endeavor in order to respond to the expected growth in the elder care industry with "high-quality elder care services" that will elevate the healthcare industry. She claims that her business' potential economic effects will contribute to more than her business, but also the nation, including the creation of jobs for U.S. workers. She also argues that her business' focus on elderly home care shows its commitment to more than profits, but also social welfare and its support of U.S. government legislation focused on enhancing the quality of life for elderly individuals.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review, the Petitioner has not demonstrated that the evidence submitted establishes her eligibility by a preponderance of evidence, as discussed below.

The Petitioner submitted her business plan which provides an overview of her proposed home care consulting business. The business plan gives a general summary of the business' services stressing its consulting would be "tailored to address the specific priorities of each individual organization." Her business would provide consulting to home care organizations in the [redacted] area with a focus on improving their administration and performance; evaluating and developing elder care programs; and training management, staff, and the community. The business plan also provides an analysis of

the home care industry in the United States, including the expected growth and demand in the industry due to the aging U.S. population, as well as the business' proposed marketing and sales strategies.

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. *Matter of Dhanasar*, 26 I&N Dec. at 893. We noted that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* at 889. Here, the evidence does not suggest that the Petitioner's work establishing a home care consulting business would impact the elder care and healthcare fields more broadly. In *Dhanasar*, 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. Here, the Petitioner's general statements that she intends to be an entrepreneur whose business would benefit the U.S. economy by hiring employees in a growing industry or would benefit social welfare by providing home care to the elderly, do not rise to the level of the national importance.

We recognize the importance of the home care industry, the fields of home care and elder care, and related careers; however, merely working in the home care industry or establishing a home care consulting business is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* We acknowledge that a shortage of home care professionals for the elderly demonstrates substantial merit of a proposed endeavor; however, it does not render a proposed endeavor nationally important under *Dhanasar's* framework, as it does not in itself establish the proposed endeavor's impact in the field. The issue here is whether the Petitioner has established how her proposed endeavor would affect national home care employment levels or the U.S. economy more broadly consistent with national importance. The record does not demonstrate how the Petitioner's proposed endeavor will address a shortage of qualified home care workers.

To further support the national importance of her endeavor, the Petitioner submitted an opinion from a professor of sociology at [REDACTED]. The opinion, however, focuses on the expected growth of the home care industry, specifically for the elderly. Based on the Petitioner's academic credentials and professional experience, the opinion indicates that the Petitioner's business would be in a position to provide training and development to employees to ensure "high-quality services to home care organizations." This would "fill in the gap" of needed home care services to the elderly. The opinion generally states that the Petitioner's business can "substantially contribute to the nation's growth" through community development; the creation of new jobs and business; and contributing to the growth of the gross domestic product, exports, and the standard of living. In addition, the opinion lists U.S. government legislation that supports elder care and entrepreneurs, and claims that the Petitioner's business would impact such national initiatives.

Instead of focusing on the Petitioner's specific endeavor having a prospective impact in the fields of elder care and home care, the opinion focuses on the need for elder care workers and how the Petitioner's academic credentials and experience make her well positioned to provide training and consulting advice to U.S. home care agencies. The opinion's reliance on the Petitioner's academic credentials and professional experience to establish the national importance of her proposed endeavor

is misplaced. A petitioner's academic credentials and professional experience relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong.

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. *Id.* at 889. The opinion's general statements that the Petitioner's business would have a potential prospective impact to the U.S. economy and social welfare; impact the field of home care; and support U.S. government initiatives are not sufficient to demonstrate the national importance of the Petitioner's proposed endeavor. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988); see also *Matter of D-R*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Also, as previously discussed, stating that the Petitioner's work would support an important industry with a shortage of qualified workers is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The Petitioner has not sufficiently documented the potential prospective impact, including the asserted economic and social welfare benefits. The Petitioner has not provided corroborating independent and objective evidence to support her claims that her business' activities stand to provide economic and social welfare benefits to the United States. General statements and claims alone are not sufficient to demonstrate her endeavor has the potential to provide economic and social welfare benefits; the Petitioner must support her assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient documentary evidence that her proposed job duties as the owner and manager of her business would impact the elder care and home care fields more broadly, rather than benefiting her business and her proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance. The economic and social welfare benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed home care consulting work and those claimed benefits.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver. This basis for denial is dispositive of the Petitioner's appeal, and therefore we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under the second and third Dhanasar prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); 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 established eligibility for the underlying EB-2 immigrant classification. Also, the Petitioner has not met the requisite first prong of the Dhanasar analytical framework. Therefore, the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.