U.S. Citizenship and Immigration Services

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

In Re: 37689756

Date: APR. 02, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a medical doctor, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions with an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition concluding that the Petitioner did not demonstrate the Beneficiary's eligibility 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 withdraw the Director's decision and remand the matter for entry of a new decision.

## 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 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).

Once 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." 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, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship

and Immigration Services (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 Petitioner, a doctor of dermatology, stated that his proposed endeavor was to conduct research "to develop a topical treatment that effectively treats androgenetic alopecia by combining vasodilators and anti-androgen drugs based on autologous plasma." More specifically, the Petitioner indicated that the purpose of his research was to develop a topical treatment for the most common cause of hair loss with less side effects than current treatments.

The Director determined that the Petitioner qualified for the underlying EB-2 classification as a member of the professions with an advanced degree. Therefore, the remaining issue was whether the Petitioner established eligibility for a national interest waiver under the *Dhanasar* framework. The Director concluded that the Petitioner did not meet any of the three prongs of *Dhanasar*, but did acknowledge that his proposed endeavor had substantial merit.

### A. National Importance

The first *Dhanasar* 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* We therefore "look for broader implications" of the proposed endeavor, noting 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.

The Petitioner stated that current hair loss treatments have problematic side effects, such as sexual dysfunction, prostate problems, fetal abnormalities, among others, as well as inconsistent effectiveness. The Petitioner contended his proposed endeavor would lead to a safer and more effective solution improving the scalp health of individuals around the world. In addition, the Petitioner asserted that his proposed endeavor would enhance diversity and the quality of U.S. culture

[1] *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).

through greater participation by the population in social activities and cultural events, and in turn, boosting the economy in industries such as fashion, leisure, and travel. He also stated that his new hair loss treatment would lead to new manufacturing facilities to produce products resulting from his research, including personnel hired to operate these facilities, likely to be constructed in economically depressed areas in the United States. The Petitioner emphasized submitted support letters from other medical professionals in the field discussing the prospects of his asserted research and the claimed national or even global impacts of his proposed endeavor.

In concluding the Petitioner did not establish national importance, the Director listed the different criteria assessed when determining whether a proposed endeavor has national importance and stated that "the petitioner has not submitted sufficient documentary evidence that demonstrates the proposed endeavor will have potential prospective impact." On appeal, the Petitioner contends the submitted evidence clearly demonstrates that his proposed endeavor reflects a broad impact on his field, significant positive economic impact and job creation, and contributions to national initiatives to reduce healthcare costs, enhance patient quality of life, and promote overall workforce productivity.

The Director provided no analysis or discussion of the Petitioner's assertions with respect to the prospective national importance of his proposed endeavor, nor any mention of the evidence submitted in support of these contentions. On remand, the Director should fully consider the evidence submitted in support of asserted national importance and provide sufficient analysis related to the Petitioner's proposed endeavor and whether it would have a potential prospective impact on a national level.

B. Well-positioned to advance the proposed endeavor

The second prong shifts the focus from the proposed endeavor to the individual. *Id.* at 890. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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. *Id.*

In the denial decision, the Director pointed to copies of two emails provided by the Petitioner in response to the request for evidence (RFE), noting one indicated that a university's medical school had no room for the Petitioner's research in their department and that another was dated after the petition was filed. The Director concluded these emails reflected that the Petitioner's "credentials are insufficient to demonstrate that he is well positioned to advance the proposed endeavor." On appeal, the Petitioner points to other evidence on the record it asserts demonstrates he is well-positioned to advance the proposed endeavor, including documentation reflecting that a paper he published in a scholarly journal related to his proposed endeavor was well cited in other scholarly works and support letters from several other medical professionals.

Again, the Director did not appear to fully consider the evidence provided by the Petitioner, focusing only on two submitted emails. The Director did not sufficiently consider and analyze the evidence discussed by the Petitioner on appeal, as well as several other emails discussing the prospects of his proposed endeavor, evidence of his professional experience as a dermatologist, along with other provided evidence.

On remand, the Director fully consider the evidence submitted by the Petitioner and provide sufficient analysis as to whether he is well-positioned to advance his proposed endeavor.

C. Whether on Balance a Waiver is Beneficial

The third prong requires a 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. *Id.* at 890-91. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. *Id.* In each case, the factor(s) considered must, taken together, establish 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. *Id.* at 891.

In discussing the third prong of *Dhanasar*, the Director only stated that "the petitioner has not submitted sufficient documentary evidence for the beneficiary that demonstrates, 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 Director provided no reasoning for this conclusion or discussion of the submitted evidence in relation to the factors discussed in *Dhanasar* in making a determination under the third prong. In any new decision, the Director should provide sufficient analysis clearly articulating how the Petitioner did not satisfy this prong reflecting full consideration of the evidence and discussion of the factors discussed in *Dhanasar*.

## III. CONCLUSION

The Director may request any additional evidence considered pertinent to the new determinations and any other issues. As such, we express no opinion regarding the ultimate resolution of this case on remand. However, an officer must fully explain the reasons for denying a petition to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.