U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36778333

Date: APR. 29, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a bacteriologist and clinical analyst, seeks employment-based second preference (EB- 2) immigrant classification as an advanced degree professional, 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 Texas Service Center denied the petition, concluding that the Petitioner established she is eligible for EB-2 classification, but not that she merits a discretionary waiver of the job offer requirement 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 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. 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." *Id.*

Matter of Dhanasar, 26 I&N Dec. 884 (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

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

- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

II. ANALYSIS

The Director determined that the Petitioner does not merit a discretionary waiver of the job offer requirement in the national interest. While the Director found the Petitioner had established the substantial merit of her proposed endeavor under *Dhanasar's* first prong, the Petitioner did not establish the national importance of her proposed endeavor under *Dhanasar*'s first prong, that she is well-positioned to advance the endeavor under *Dhanasar's* second prong, or that, on balance, waiving the job offer requirement would benefit the United States under *Dhanasar's* third prong.

Because a petitioner must establish that they meet all three prongs of the *Dhanasar* framework to obtain a national interest waiver, if even one of the prongs is not established, a petitioner is ineligible for this waiver. Accordingly, we will analyze the Petitioner's evidence under prong one of the *Dhanasar* framework and, as explained below, because we conclude she has not established her eligibility under that prong, we need not reach and therefore reserve the Petitioner's arguments regarding the second and third *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues the decision of which is unnecessary to the ultimate decision).

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner intends to create a consultancy (the Company) in [redacted] Missouri, where she will work as its CEO and run a clinical laboratory to implement point of care testing (POCT) techniques. According to the Petitioner's business plan, the purpose of her proposed endeavor is to increase access to healthcare and improve health outcomes by adopting metabolic screening tests to minimize the risk of clogged arteries, heart attacks, strokes, and other circulatory complications caused by elevated fat levels. The Petitioner asserts her POCT techniques and expertise in hematology, blood chemistry, immunology, parasitology, microbiology, and microscopy will contribute to the timely identification of dyslipidemia (a condition that causes unhealthy levels of different types of lipids in the blood) by providing consulting and technical assistance to U.S. companies and healthcare providers interested in incorporating metabolic screening tests into their portfolio of services. In addition, the Petitioner plans to use POCT techniques (described as "an analytical system used to detect alterations in blood lipid levels, such as cholesterol, HDL cholesterol, LDL cholesterol and triglycerides") in rural, underserved and economically distressed areas in the United States that have limited access to advanced healthcare solutions and services.

In response to the Director's request for additional evidence (RFE), the Petitioner submitted a statement in which she outlines seven major impacts that will stem from her proposed endeavor. These include: providing increased access to clinical laboratory health services to better diagnose and manage cardiovascular diseases using POCT techniques; mitigating part of the government's needs at the operational, economic and social levels; prioritizing the finding of cardiovascular diseases; establishing strategic alliances with other sectors, such as agriculture, to support government actions on nutrition security; mitigating the economic impact of cardiovascular disease; optimizing the

resources that the country has in human talent to develop the project in several states in North America; and generating a solid and stable project that builds foundations for cooperation, collaboration, and exchange of information in order to move towards a research chain. To support her assertions, the Petitioner relies heavily on industry reports and research articles discussing the importance of global health, improving access to healthcare, nutrition security, testing, biotechnology, vaccine passports, the prevalence of metabolic diseases, federal efforts to combat obesity and associated metabolic syndromes, and the healthcare challenges faced by underserved and impoverished populations in the United States. The Petitioner also provides evidence of the shortage of clinical laboratory workers, and the effects of this shortage on healthcare delivery and access as well as research and education. Moreover, the Petitioner's business plan provides statistics and data related to the growing market size and demand for POCT techniques, which are less costly and provide more rapid and accurate delivery of results to improve health outcomes.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that, in assessing national importance, "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.* at 890. 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.*

The Director determined that the Petitioner's endeavor will be limited to serving the Company's clients and their patients, and that the evidence in the record did not demonstrate how her consultant and entrepreneurial endeavor in the health field rises to the level of national importance. The Director further determined there was insufficient evidence to establish that the projected employment levels were sufficient to be considered "substantial positive economic effects" as contemplated by *Dhanasar*; that the Petitioner's proposed endeavor would alleviate the documented labor shortages in her field; or that she had achieved "such research and advancements" in her field to support her claim that her proposed endeavor would lead to advancements in the field or lower healthcare costs.

On appeal, the Petitioner provides a legal brief which advances several arguments asserting the Director erred in their analysis. First, the Petitioner asserts that *Dhanasar's* legal holding does not require evidence that she will employ a significant population of workers but only that the endeavor has "significant potential to employ U.S. workers." In addition, the Petitioner analogizes her proposed endeavor to the one at issue in *Dhanasar*, and asserts it is unreasonable to require a federal regulation, policy document or national initiative to specifically mention the Petitioner or her endeavor in order to establish an endeavor's national importance. Moreover, she contends that the independent expert letter provided by [redacted] addresses the national importance of her proposed endeavor, but that the Director impermissibly disregarded it.[2] Finally, the Petitioner further contends that she was held to a "significantly" higher than preponderance of the evidence standard and outlines the evidence she contends establishes her burden.

[2] We note that on appeal, the Petitioner asserts that *Dhanasar's* standard requiring evidence of "substantial positive economic effects" is challenging to establish and requests additional guidance to USCIS officers and petitioners to better understand what evidence would meet that standard. However, this request is beyond the scope of this appeal.

As stated above, we review this matter under the preponderance of the evidence standard, which means that the 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.* Upon de novo review of the record, and for the following reasons, we conclude the Petitioner has not established the national importance of her endeavor as contemplated under the *Dhanasar* framework, by a preponderance of the evidence.[3]

To begin, while the Petitioner asserts the Director erred by requiring her endeavor to be specifically mentioned in a federal regulation, policy document or national initiative, the Director did not state that this was a requirement. *See Id.* Instead, the Director correctly explained that the submitted evidence was not sufficiently probative of her endeavor's national importance because, as discussed in *Dhanasar*, the relevant question is not the importance of the industry or profession in which the individual will work, but whether the specific proposed endeavor has broad enough implications to be considered of national importance. *See Matter of Dhanasar*, 26 I&N Dec. 889. Here, because the submitted evidence did not specifically concern her endeavor, the information contained in the articles and government fact sheets are probative of the importance of the healthcare industry and professions within the healthcare industry, but the information is not sufficiently probative to establish that her specific proposed endeavor is of national importance. *See Matter of Chawathe*, 25 I&N Dec. at 375.

By way of contrast, in *Dhanasar*, Dr. Dhanasar provided detailed expert letters describing U.S. Government interest and investment in his research and showing that he played a significant role in projects funded by federal grants through NASA and the Department of Defense. Thus, not only did Dr. Dhanasar establish that his endeavor was of government interest, but he also established that the U.S. government was funding his endeavor. Here, the evidence does not establish any U.S. government funding, investment, or interest in the Petitioner's specific endeavor. *Id.* As such, her analogy to Dr. Dhanasar's case is incongruous. *Id.* As further clarification, we note that evidence establishing the importance of healthcare, POCT techniques as well as rapid test delivery may, but not always, support the substantial merit of a petitioner's proposed endeavor. Likewise, here, the submitted evidence helps establish her endeavor's substantial merit but not its national importance because it is not probative of the government's interest, funding or investment in her work. *Id.*

We acknowledge the evidence of a labor shortage in the clinical laboratory workforce and the impact this has on patient care, healthcare access and on our education institutions and research facilities; however, the Petitioner's proposed endeavor does not appear or aim to alleviate the shortage of these workers to such a degree that it would be considered of national impact. *Id.* For example, she has not indicated a plan to train clinical laboratory staff. *Id.* We acknowledge one of the impacts noted in the Petitioner's national importance statement includes "optimizing resources that the [United States] has in human talent to develop the project in several states in North America," but there are insufficient

[3] We acknowledge that the Director erroneously identified that the Petitioner's proposed endeavor is to work as a consultant, however, this error appears harmless because it did not alter the ultimate outcome of the petition. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021). In addition, we acknowledge the Director analyzed evidence submitted in support of the second *Dhanasar* prong, under prong one; however, this is also a harmless error, as in our de novo review, the Director's overall conclusion to deny the petition is correct. *Id. (citing Japarkulova v. Holder*, 615 F.3d 696, 701 (6th Cir. 2010), which states that an error is harmless where there is no reason to believe that a remand might lead to a different result).

details to understand how she will alleviate a shortage of clinical laboratory workers at a level commensurate with *Dhanasar* such that her endeavor could be considered of national importance. *Id.* Lastly, shortages of qualified workers is directly addressed by the U.S. Department of Labor through the labor certification process and Schedule A regulations. As such, a labor shortage in a field, on its own, does not establish a proposed endeavor's national importance. *Id.*

The Petitioner highlights that her endeavor aligns with federal government initiatives aimed at promoting health, reducing obesity and associated diseases, and strengthening the economy through increased participation and productivity from healthier workers. We acknowledge the importance of a healthy workforce as well as the rapid, accurate and efficient delivery of healthcare services to underserved communities; however, while these have substantial merit in relation to the U.S.'s healthcare system, the Petitioner has not established how the proposed endeavor will affect the healthcare industry more broadly, consistent with national importance. *Id.* In *Dhanasar*, we explained 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." *Matter of Dhanasar*, 26 I&N Dec. 893. However, here, the Petitioner has not established the extent to which her proposed endeavor's POCT techniques differ from or improve upon those already available and in use in the United States such that her proposed endeavor would have national or global implications within her field or for the United States.

In her RFE response, the Petitioner provided a letter from a health consultant at [redacted] The writer describes the Petitioner's work to develop and implement "at the institutional level a population screening strategy implementing 6 planning stages . . . promoting the early detection of diseases such as dyslipidemias, cervical cancer, diabetes and prostate cancer." The screening strategy assisted "public health surveillance platforms" in gathering statistical morbidity for purposes of creating public health policies. The writer affirms that through her endeavor, the Petitioner will be able to protect, promote and restore the health of an entire population or a specific group and that in the case of cardiovascular diseases, which is the main cause of mortality in the United States, her endeavor will promote health, prevent spread, and generate legislation and regulations to promote public health, particularly among vulnerable and high-risk populations. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility. Thus, the submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.; 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). Here, while the letter provides insight into the Petitioner's work in Colombia, it does not sufficiently explain the basis for its broader claims. *Matter of Chawathe*, 25 I&N Dec. at 375. For example, the writer explains that the letter's contents were written after reviewing the Petitioner's credentials, experience, and achievements in the field of bacteriology and clinical laboratory science. However, it does not appear from the letter that the writer reviewed the Petitioner's proposed endeavor. *Id.* Moreover, the writer appears to be an expert on Colombia's administration of public health but not the United States. *Id.* As such, while the letter helps us understand the Petitioner's prior work experience, it is insufficient to establish her endeavor's national importance under the *Dhanasar* framework. *Id.*

We explained in *Dhanasar* 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 . . . may well be understood to have national importance." *Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner's business plan provides a five-year staffing projection, which shows the Company will hire 12 workers with a payroll of $1,072,413 and 17 independent contractors, as well as generate $1,072,413 in payroll expenses, and between $1,000,000 and $6,500,000 annually in revenue. In addition, the Petitioner asserts her endeavor will have substantial positive economic effects in an economically depressed area because the Company is located in [redacted], Missouri, which is home to 27 "Opportunity Zones" and Historically Underutilized Zones (HUBZone).[4] By year five, her business plan projects $1,369,110 total operating expenses, $159,523 in net profits, $1,597,000 in total projected sales, and $229,229 annually in taxes. In addition, the Petitioner asserts that the Company's location in an Opportunity Zone and HUBZone as well as the health benefits that would flow to the underserved communities in this region, will lead to increased economic output because the workforce will be healthier and more productive. We acknowledge the Petitioner's five-year business plan, however, we agree with the Director's assessment that the plan does not sufficiently detail the basis for the revenue and staffing projections to establish, by a preponderance of the evidence, that her endeavor will have the economic impacts she purports. *Matter of Chawathe*, 25 I&N Dec. at 376. Furthermore, we acknowledge that the evidence needed to establish an endeavor's "significant potential to employ U.S. workers," and "substantial positive economic effects" will vary from case to case; however here, the business plan alone is not sufficiently probative to establish that her endeavor will have the intended economic effects by a preponderance of the evidence. *Id.*

For these reasons, the Petitioner has not demonstrated that, beyond the limited benefits provided to her prospective clients or patients, that the proposed endeavor has broader implications in the field of health care or the provision of healthcare services; or the significant potential to employ U.S. workers; or other substantial positive economic effects, particularly in an economically depressed area, as contemplated by *Dhanasar*.

III. CONCLUSION

Accordingly, the Petitioner has not demonstrated the national importance of the proposed endeavor under the first *Dhanasar* prong, and therefore, has not established that she merits, as a matter of discretion, a national interest waiver of the job offer requirement attached to this classification.

ORDER: The appeal is dismissed.

[4] An Opportunity Zone is a designated economically distressed area created under the Tax Cuts and Jobs Act of 2017 to encourage long-term investments in low-income communities across the U.S. *See* https://www.irs.gov/newsroom/opportunity-zones. A HUBZone is designated by the Small Business Administration (SBA) to identify areas and communities that have high poverty rates and lower income households as determined by the Department of Housing and Urban Development (HUD). *See generally*, https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program.