U.S. Citizenship and Immigration Services

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

In Re: 32291536

Date: AUG. 12, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a nutritionist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding 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 record did not establish that the Petitioner was eligible for a national interest waiver of the job offer requirement. 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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 matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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.*

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. *Id.*. at 889.

The second prong shifts the focus from the proposed endeavor to the individual. 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.* at 890.

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. 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. 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 890-91.

## II. ANALYSIS

The Petitioner is a nutritionist who has primarily focused on clinical pediatric treatments and interventions. She holds a bachelor's degree in nutrition and has worked as a nutritionist, predominantly in hospital settings.

The Director found the Petitioner qualified for underlying EB-2 classification as a member of the professions holding an advanced degree. However, the Director determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification from a U.S. employer. Specifically, the Director concluded that while the record established that the proposed endeavor had substantial merit, the national importance of the endeavor had not been demonstrated under prong one. The Director also determined that the Petitioner had not shown that a waiver of the job offer requirement would be beneficial as required by prong three. We agree the Petitioner has not established the national importance of the endeavor, as required under the first prong of *Dhanasar*.

A. The Petitioner Has Not Demonstrated that Her Endeavor Has National Importance

On appeal, the Petitioner argues that the Director's decision inadequately considered the "vast, objective and independent evidence" submitted in support of her Petition. She argues that the industry articles submitted before the Director corroborated the national or global implication of her planned activities, and she highlights the letters of support she submitted. She contends that the Director mistakenly treated this evidence as general support for the importance of nutritionists, when it was in fact corroborating evidence for her specific endeavor. The Petitioner stresses that her updated personal statement provided in response to the Director's request for evidence (RFE) highlights "a series of activities intended to combat misinformation by working together with medical professionals, clinics, school, and community organizations to provide balanced dietary resources for children and program participants."

The Petitioner also takes issue with the Director's analysis of a provided expert opinion, noting that it is relevant, probative, and credible. Ultimately, the Petitioner asserts that she has satisfied the requirements under prong one of the *Dhanasar* framework because she has shown a significant potential to broadly enhance societal welfare, has shown that she will contribute to the advancement of a valuable field of study, and has demonstrated the substantial positive economic impacts of her proposed endeavor.

In support of the endeavor's national importance, the Petitioner has submitted evidence including, but not limited to: an updated activity plan; an expert opinion discussing her qualifications and eligibility for a national interest waiver; affidavits of support from employers detailing her past experience as a nutritionist; articles explaining major health crises tied to nutritional deficiencies in the United States; reports illustrating how nutritionists can be deployed to combat obesity, diabetes, and other noncommunicable diseases; and proof of educational attainment including diplomas, certificates, and additional training.

The Petitioner has not established that her proposed endeavor has a prospective potential impact rising to the level of national importance. The Petitioner's endeavor is to improve the nutrition and overall health of people in the United States by continuing her career in nutrition.[2] The Petitioner notes that she intends to combat rampant nutrition misinformation, collaborate with healthcare programs and schools, and improve health outcomes for patients. The Petitioner highlights that lack of adequate nutritional intervention causes significant economic costs in the form of increased noncommunicable disease rates, loss of productivity, and healthcare costs. She also stresses that nutritionists are in short supply.

The Petitioner argues that "a petitioner is not required to demonstrate how they will, individually, impact their field of endeavor" and argues that the Director misapplied *Dhanasar* by focusing on the endeavor's scope "instead of its potential prospective impact." The Petitioner stresses that she will follow a client-based or project-based operational model, but that this does not limit the potential

[2] The Director's decision noted that the Petitioner initially described her endeavor as continuing her care in the United States "focusing on the nutrition field, and the pediatric population" but later indicated she would "improve the nutrition and overall health of people in the United States." On appeal, the Petitioner asserts there is no meaningful distinction between these two descriptions. As the Director's decision does not depend on which of these two formulations are applied and instead analyzes the evidence as a whole, we will not address any possible change in endeavor on appeal.

prospective impact of her planned activities. She contends that requiring petitioners "to demonstrate how they can individually impact the country on a national scale" is an impermissible broadening of the national importance requirement that would preclude almost all national interest waivers.

Throughout the record, the Petitioner points to her background, education, and experience in her field. The Petitioner also provides several letters of support that discuss her knowledge and experience. The Petitioner's knowledge, skills, and experience in the field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor 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.

The Director did not misapply the *Dhanasar* framework. We see no evidence that the Director denied the national interest waiver based on the proposed endeavor's geographic scope. Rather, the Director indicated that the proposed endeavor lacked the broader implications outlined in *Dhanasar*. *Id.* at 889. In particular, the Director highlighted that the proposed endeavor did not stand to sufficiently "extend beyond her future employer(s) and patients to impact the nutrition and healthcare field or U.S. economy more broadly."

We agree with the Director that national importance as defined in *Dhanasar* has not been demonstrated in this case. The Petitioner's direct patients and collaborating partners may certainly find the provided nutrition education and dietary planning valuable; however, more is required for a national interest waiver. The Petitioner highlights the economic benefits from improving nutritional outcomes and reducing diseases such as obesity and diabetes. However, she has not demonstrated that her work has implications within her field as contemplated in *Dhanasar*, which highlights possible national implications including improved manufacturing processes or medical advances. *Id.* These or similar factors are not present in the Petitioner's proposed endeavor.

Similarly, the evidence shows that the Petitioner has familiarized herself with the current state of nutritional education in the United States, but she has not shown that her endeavor stands to improve human knowledge, further research outcomes, or contribute to scientific advancements. *Id.* Finally, the Petitioner has not argued that her proposed endeavor would have "significant potential to employ U.S. workers or [have] other substantial positive economic effects, particularly in an economically depressed area." *Id.* The Petitioner's economic arguments, namely that her work will reduce healthcare costs and increase productivity, are not accompanied by evidence of the particularized economic impact that her endeavor would provide.

Because the documentation in the record does not establish the national importance of the proposed endeavor, as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve opinion on whether the Petitioner could satisfy the second and third prongs to qualify for a national interest waiver. *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 the applicant did not otherwise meet their burden of proof).

## III. CONCLUSION

The Petitioner has not shown that the proposed endeavor is of national importance. Because she has not met the first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.