U.S. Citizenship and Immigration Services

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

In Re: 35387275

Date: DEC. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a hemodialysis nurse, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 record did not establish the Petitioner's eligibility for the requested national interest waiver. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. 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. *Id*.

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. *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:

- 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.*

## II. ANALYSIS

The Director determined that the Petitioner qualifies for EB-2 immigrant classification as an advanced degree professional, but did not establish her eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not established eligibility for the requested national interest waiver and dismiss the appeal.

### A. National Interest Waiver

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The record reflects that the Petitioner intends to operate a mobile health company, [redacted] to provide kidney dialysis treatment and related services through mobile medical centers. Recognizing the high demand of kidney dialysis treatment in the United States and the advantages of mobile medical centers, the Petitioner intends to partner with key healthcare entities, including hospitals, insurance companies and health centers to provide mobile dialysis services. According to the Petitioner, by operating as a mobile clinic and reducing overhead costs, she will be able to provide dialysis services at lower costs to patients who otherwise would be unable to travel to medical clinics, including those in rural areas.

In support of this endeavor, the record contains two endeavor plans outlining the services the Petitioner intends to offer. In her initial plan, the Petitioner indicated that, in addition to at-home dialysis services, the company will also offer pre-dialysis patient education; nutrition counseling and planning; medication management and support; remote monitoring and telehealth services; transportation services for clinic visits; and customized care plans. The Petitioner stated that, through her mobile clinic she "aims to revolutionize kidney care by providing high-quality, accessible, and convenient mobile dialysis services." Additionally, the Petitioner asserted that her company intended to invest its profits into research, technology, and resources to improve its services and expand its reach. In response to the Director's request for evidence (RFE), the Petitioner submitted a revised endeavor plan, which was substantially similar to her first; however, the Petitioner removed the section

[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).

discussing the additional services her company planned to offer, and primarily focused on the mobile dialysis and related services. Notably, however, the Petitioner did not acknowledge this change.[2]

In addition to the two endeavor plans, the Petitioner also submitted an expert opinion letter, several industry articles and reports discussing the prevalence of kidney disease in the United States and statistics relating to the use of in-home dialysis, and articles discussing the increase in mobile health care, as well as articles addressing the disparity between rural and urban dialysis centers. Additionally, she provided evidence of investor interest in her company. [3]

The Director concluded that the record did not establish the national importance of the Petitioner's endeavor as she did not show her endeavor would have broader implications beyond the impact to her potential patients and the individuals she intended to serve. Moreover, the Director determined the record did not establish that the Petitioner's endeavor would result in substantial positive economic effects, or otherwise broadly enhance societal welfare.

On appeal, the Petitioner generally asserts the Director erred in concluding that Petitioner did not establish the national importance of her endeavor and contends that the Director failed to properly consider the evidence on record, and imposed a higher standard in evaluating the Petitioner's eligibility for a national interest waiver. Specifically, the Petitioner claims that the Director only highlighted the evidence briefly, and did not provide sufficient discussion of her endeavor plan, beyond a discussion of her employment projections. And she asserts that the evidence in the record establishes that her company and the services she intends to offer "directly impact national goals to treat kidney diseases and advance mobile medical centers."

The standard of proof in this proceeding is preponderance of the 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 of the record, we agree with the Director's evaluation of the evidence, and conclude it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

Notably, when discussing the national importance of her endeavor both before the Director and on appeal, the Petitioner focuses primarily the importance of kidney dialysis and the need to provide mobile dialysis to patients who are otherwise unable to travel to stationary centers, particularly within rural areas. Yet, while we agree that the evidence in the record establishes the prevalence of kidney disease in the United States and the importance of increasing access to dialysis for rural patients, this demonstrates the substantial merit of her endeavor, but does not establish its national importance.

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[2] We also note that the Petitioner's initial endeavor plan also provided conflicting information relating to the nature of her endeavor. For example, when discussing the economic impact of her endeavor, it states "by providing guidance on budgeting, financial planning, and investment strategies [the Petitioner] can help businesses grow and create jobs." Yet, the Petitioner has not otherwise indicated her intent to provide financial planning services in the record.

[3] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

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." *Dhanasar* at 889. 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.

Here, although the Petitioner claims on appeal that her company will "directly impact national goals to treat kidney disease and advance mobile medical centers," she has not shown how any prospective impact her company may have on these broad national initiatives would rise to the level of national importance contemplated in *Dhanasar.* She has not explained, for example, how the mobile dialysis services she intends to offer her patients would impact the industry at a level commensurate with national importance, or otherwise expand the reach of mobile medical centers in a meaningful way as she claims on appeal. Although the Petitioner's statements reflect her intention to provide valuable services to her future patients and customers, she has not provided sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, activities which only benefit the Petitioner's patients, like the offerings outlined in her endeavor plans, would not have broader implications in the field. *See Dhanasar* at 893.

Furthermore, the Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects contemplated in *Dhanasar. Id.* at 890. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from her company and its operations would rise to the level of national importance contemplated in *Dhanasar.* Similarly, while we acknowledge the Petitioner's assertions that she intends to operate her business within an area designated as a HUBZone by the Small Business Administration, she has not explained how her prospective employment of U.S. workers in these designated underutilized business zones would have substantial positive economic effects commensurate with national importance. *Id.*

Additionally, we note that the record contains inconsistent information pertaining to the Petitioner's employment and financial projects. Initially, the Petitioner indicated that by the fifth year of operations she anticipated generating annual revenue of $1,811,150 while employing 19 individuals in various roles, including dialysis nurses, dialysis technicians, mobile unit operators, nurse educators, dietitians, pharmacists, and IT specialists. Subsequently, in her revised proposed endeavor plan, the Petitioner indicated that by the fifth year of operations, she anticipated $2,250,000 in revenue, and intended to employ hemolytic dialysis nurses, account executives, marketing specialist, and operations manager, without indicating how many total employees would fill these roles. The Petitioner did not address these changes, and neither endeavor plan provides sufficient explanation for the basis of these employment projections. And, beyond providing an anticipated cost of her services, the endeavor

plans also do not explain the basis for these financial projections. Yet, even if the endeavor's revenue and job creation projections were sufficiently explained and supported, they do not establish that her company would operate on a scale rising to the level of national importance contemplated in *Dhanasar*, nor has the Petitioner explained how her proposed employment numbers and revenue would impact her company's areas of intended operations.

We have also reviewed the expert opinion letter in the record, and conclude it provides little probative value in establishing the national importance of the Petitioner's proposed endeavor. In their letter, Dr. J-L- states that the Petitioner's company is a "highly relevant and timely initiative," and will result in broader implications to the field, but they do not provide specific examples regarding how the individual services the Petitioner will offer to her patients would meaningfully impact the field, or otherwise lead to broad implications at a level commensurate with national importance. As discussed, while we recognize the growing importance of mobile health care and the benefits it can offer to dialysis patients, the expert opinion does not establish the endeavor would meaningfully impact these initiatives at a broader level. 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 a noncitizen's eligibility. 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).

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

B. Eligibility for the Underlying Classification as an Advanced Degree Professional

While the appeal must be dismissed as the Petitioner has not satisfied the first prong of the *Dhanasar* framework, upon a de novo review of the record, we will also withdraw the Director's determination that the Petitioner qualifies for EB-2 immigrant classification as an advanced degree professional.

As previously stated, the regulatory definition of "advanced degree" states, in pertinent part:

> A United States baccalaureate degree or a foreign equivalent degree *followed by* at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

8 C.F.R. § 204.5(k)(2) (emphasis added).

To demonstrate five years of post-baccalaureate experience, a petitioner must provide "evidence in the form of letters from current or former employer(s) showing that [the petitioner] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B). The letters must also include "a specific description of the duties performed by [the petitioner]." 8 C.F.R. § 204.5(g)(1).

Prior to entering the United States, the Petitioner earned a *lisans derecesini* (bachelor's degree) in nursing from [redacted] in Turkey in June 2022. The record also contains letters from the Petitioner's former employers verifying her experience through 2019. Notably, however, the letters in the record do not contain a "description of the duties performed" beyond confirmation of the Petitioner's job title with each organization. *See* 8 C.F.R. § 204.5(g)(1). Nonetheless, even if the evidence confirming the Petitioner's employment complied with the regulations, none of the experience documented in the record occurred *after* she completed her bachelor's degree in 2022. As such, the record does not establish that she acquired five years of progressive, *post-baccalaureate* experience in the specialty, and she has not established that she is a member of the professions holding an advanced degree.

Because the resolution of the issues pertaining to the Petitioner's eligibility for the requested national interest waiver under the first prong of the *Dhanasar* analytical framework is dispositive of this appeal, we will reserve consideration of the Petitioner's eligibility for the requested EB-2 immigrant classification as an individual of exceptional ability, as well as her asserted eligibility under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 (1976) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

## III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion, and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.