U.S. Citizenship and Immigration Services

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

In Re: 31676644

Date: JULY 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a physician, 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish underlying eligibility for EB-2 classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and also did not show that waiver of the job offer, and thus of the labor certification, is in the national interest because he did not establish that his proposed endeavor has substantial merit and national importance; he is well positioned to advance the proposed endeavor; and, on balance, that the waiver is beneficial. 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. 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:

- 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. ADVANCED DEGREE

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability.

The Petitioner states he is qualified for the EB-2 classification because he has the foreign equivalent to a U.S. advanced degree based on his academic record alone, although he also completed post-graduation work in clinical cardiology at [redacted] Brazil from January 2004 to January 2007, and has 14 years of experience in the field. The record contains evidence that the Petitioner was granted the title of physician (*titulo de medico*) and academic transcripts showing that he completed a six-year course of medicine at the [redacted] in Brazil from January 1998 to December 2003.

We further consulted the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. *See generally* American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, https://www.aacrao.org/edge (last visited June 24, 2024). The database indicates that the *titulo de medico* in Brazil is completed after six years of professional study in medicine and represents the attainment of a level of education comparable to a first professional degree in medicine in the United States, which is a Doctor of Medicine (M.D.) degree. Therefore, the Petitioner has established that he qualifies as a member of the professions holding an advanced degree, and we withdraw the Director's finding to the contrary. The sole remaining issue is whether he merits a national interest waiver.

## III. NATIONAL INTEREST WAIVER

The Petitioner asserted that he has at least 14 years of experience as an owner and physician of a medical clinic and approximately one year of work as a technical director at a hospital in Brazil. The Petitioner also claimed that he is currently employed in the United States on a part-time basis as:

[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).

(1) a leadership course trainer; and (2) as the owner and director of an entity in Florida that prepares and repackages products to send to the warehouse of an online e-commerce company. For purposes of this National Interest Waiver (NIW) petition, the Petitioner seeks to work in the United States as an entrepreneur in the field of healthcare. According to the Petitioner, his proposed endeavor will be through an organization named B- LLC,[2] which will specialize in offering health care advice and related services throughout the United States to "individuals and companies with specific needs by acting as a preventative health follow up in addition to correct orientation and referral to necessary professionals in case of illness."

The Director denied the Petitioner's national interest waiver request, concluding that the Petitioner had not established the substantial merit and national importance of his proposed endeavor under the first prong of *Dhanasar*. With respect to national importance, the Director emphasized that the Petitioner had submitted a general business plan asserting that he would use the Florida organization named B- LLC to accomplish his proposed endeavor but had voluntarily dissolved B- LLC in [redacted] 2023 (after the filing of this petition), calling into question the credibility and long-term viability of the endeavor. The Director further found that the Petitioner's claims that his organization of B- LLC in Florida as a vehicle through which he would accomplish the proposed endeavor were not sufficient to show he had an actual endeavor that has substantial merit and national importance. Finally, the Director concluded that the Petitioner did not establish that he had satisfied the second and third prongs of *Dhanasar*.

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

Regarding his claim of eligibility under *Dhanasar's* first prong, the Petitioner initially recounted his prior work in Brazil as a cardiologist at a clinic that he owned and then as a hospital medical director and provided letters from former colleagues and employers discussing his prior work in Brazil. The Petitioner stated that he organized B- LLC in Florida as a vehicle through which he would use his prior experience as a physician and as a medical director to provide health care advice to individuals or companies to ensure that patients receive appropriate follow up care across the United States. The Petitioner further claimed that his endeavor would directly contribute to the health of the United States and that it: (1) involves investment of approximately $1.3 million dollars; (2) will create 54 direct jobs and 270 indirect jobs; and (2) has a revenue projection of $4.3 million and will thus create federal, state, and local tax contribution of $854,000 during the first five years of operation.

In his personal statement, the Petitioner claimed that he:

> intend[s] to continue using [his] expertise and knowledge, gained through [his] 19+ years of professional experience, to work as an Entrepreneur in the United States. . . . [and] will do this by developing and expanding [his] own healthcare business in the nation, [B- LLC].

[2] Names of limited liability companies such as this are withheld to protect the individual member's identity.

Additionally, the Petitioner asserted that health care providers and advisors are a critical part of the United States' economic growth and that professionals such as himself are needed to ensure the health of individuals in the United States, especially in the aftermath of the COVID-19 pandemic. As evidence of the prospective interest in his services, the Petitioner provided a letter from an individual who asserts that he is the chief executive officer (CEO) of an organization in Florida that currently provides healthcare related services, including concierge, telehealth, and medical tourism advice, to individuals in the United States and Brazil, and expressed an intent to partner with the Petitioner so that he also can provide its own clients with medical and technical advice.

Additionally, the Petitioner provided articles discussing the critical role of entrepreneurs in generating U.S. economic activity, including a 2023 U.S. Chamber of Commerce assessment of U.S. labor shortages and the impact of the COVID-19 pandemic on the U.S. labor force, and the lack of health care providers in the United States. He also included articles discussing the current U.S. administration's support for foreign-born entrepreneurs and an immigrant workforce as a means of stimulating and engaging the U.S. economy.

On appeal, the Petitioner does not include new evidence relating to the proposed endeavor, instead requesting that his previously provided evidence be considered as having satisfied the eligibility requirements by a preponderance of the evidence.

First, the Petitioner's proposed endeavor of providing follow up health care advice to people or corporations in the United States is vaguely described such that it is not possible to discern the nature of the actual endeavor. Although the stated goals of improving the health of people in the United States, generating jobs, adding to tax revenue, and improving the national and local community are favorable as a general matter, the Petitioner's evidence does not show how the proposed endeavor might accomplish his stated goals. For example, in support of his stated intent to provide healthcare consulting services to individuals and companies through his organization B- LLC, he provided a letter from the CEO of the Florida organization that expressed an intent to partner with the Petitioner once his NIW petition is approved. However, the CEO states that his own organization currently provides healthcare consulting services and does not explain what new or expanded services the Petitioner and B- LLC would provide. The articles that the Petitioner provided only discuss foreign born entrepreneurs and the lack of health care workers in the United States as a general matter, and do not address or show how the Petitioner's specific endeavor has substantial merit. Consequently, the Petitioner's evidence here is not sufficient to show that the proposed endeavor has substantial merit.

Further, as noted by the Director, the Petitioner has taken actions with respect to the proposed endeavor that are inconsistent with his stated intent of accomplishing his plans via the Florida organization named B- LLC. Specifically, after organizing B- LLC in 2022 and filing the NIW petition, the Petitioner took active steps to voluntarily dissolve the entity in [redacted] 2023. Although we acknowledge that he subsequently revoked the dissolution of the organization after the Director's RFE such that B- LLC is no longer dissolved, the Petitioner has not explained, either in response to the RFE or on appeal, why he chose to dissolve the organization while the NIW petition was still pending and after he claimed that B- LLC is the means through which he would implement the proposed endeavor. As a consequence, based on the Petitioner's vaguely expressed plans and lack of information regarding the actual endeavor, in addition to the inconsistent evidence and actions he has taken with respect to

the Florida organization through which he proposes to accomplish the endeavor, the evidence is not sufficient to establish that the Petitioner's proposed endeavor has substantial merit.

Because the documentation in the record does not establish the substantial merit of his proposed endeavor, as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver on this basis alone, and we need not consider whether it then has national importance. *Id.* at 889.

## IV. CONCLUSION

As the Petitioner has not established that he meets the first prong of the *Dhanasar* framework requiring him to show that his proposed endeavor has substantial merit, he has not shown that he is eligible for and otherwise merits a national interest waiver. We therefore reserve his arguments relating to Director's additional determination that he also did not satisfy the national importance clause of the first prong, and the second and third *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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). Because the Petitioner has not met the requirements of the *Dhanasar* analytical framework, we find that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.