U.S. Citizenship and Immigration Services

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

In Re: 38888808

Date: JUN 18, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a registered 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).

SCOPS denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of a labor certification, would be 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 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 doctoral degree is customarily required for the specialty, the alien must possess a U.S. doctorate or a foreign equivalent degree. *Id*.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation

that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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.

In 1998, under the legacy Immigration and Naturalization Service, we set forth an initial framework for adjudicating national interest waiver petitions in the precedent decision *Matter of New York State Dep't of Transp. (NYSDOT)*, 22 I&N Dec. 215, 217-18 (Acting Assoc. Comm'r 1998). Under *NYSDOT*, a petitioner must first demonstrate that the individual seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the individual will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18. We vacated our *NYSDOT* precedent decision in December 2016 and set forth a new framework for adjudicating national interest waiver petitions in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

*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,[2] 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 Petitioner proposes to establish and operate a business that will offer in-home healthcare services. SCOPS found that the Petitioner qualifies as a member of the professions holding an advanced degree. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the proposed endeavor's national importance under the first prong of the *Dhanasar* analytical framework.

### A. EB-2 Classification

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] *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).

With respect to the underlying EB-2 classification, SCOPS determined the Petitioner was eligible for the classification as a member of the professions holding an advanced degree but did so without sufficient analysis. The Petitioner claims that she has obtained the foreign equivalent of a bachelor's degree in nursing from the [redacted] in 2022.

As previously noted, 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. *See* 8 C.F.R. § 204.5(K)(2). To establish the bachelor's degree, the Petitioner submitted her academic transcripts and an evaluation of her academic credentials, which confirm that the Petitioner holds the foreign equivalent of a U.S. bachelor's degree in nursing. However, given that the Petitioner earned her bachelor's degree in 2022, the record does not show that she has five years of progressive post-baccalaureate experience in the specialty. The record, therefore, does not support the Petitioner's qualifications for EB-2 classification as an advanced degree professional. Accordingly, we will withdraw SCOPS' contrary finding.

The Petitioner also asserts that she is an individual of exceptional ability. However, SCOPS did not conduct an evaluation on whether the Petitioner qualifies as an individual of exceptional ability. Moreover, conducting further inquiry into the Petitioner's categorical eligibility such as by remanding the matter for SCOPS to issue a request for evidence seeking documentation supporting eligibility as an individual of exceptional ability in the sciences, arts, or business, would serve no legal purpose. As the Petitioner is not eligible for a national interest waiver for the reasons discussed below, we do not reach and hereby reserve our determination of her eligibility for the underlying classification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

B. National Interest Waiver: Substantial Merit and National Importance

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.*

The Petitioner intends to operate her in-home healthcare business in Florida. She states that her endeavor "aims to assist patients and people in need of care with professionals trained to assist and provide the care and support necessary to promote and act on health in the U.S. market, it will also offer online qualification and improvement courses for professionals in the home health care support." The record includes academic credentials, a resume and personal statement, an expert opinion letter, a business plan, letters from previous employers, recommendation letters, and an industry report. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

In denying the petition, SCOPS found that the Petitioner's proposed endeavor has substantial merit. SCOPS concluded, however, that the Petitioner failed to demonstrate the proposed endeavor's national importance, that she is well positioned to advance the proposed endeavor, and that, on balance, it would benefit the United States to waive the job offer requirement.

On appeal, the Petitioner submits a brief and contends that SCOPS "misapplied the legal standards" governing the national interest waiver. We note that the Petitioner refers to both *Matter of Dhanasar* and *NYSDOT* in her appeal brief. However, as we previously stated, we vacated our *NYSDOT* precedent decision in December 2016 and set forth a new framework for adjudicating national interest waiver petitions in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Petitioner further contends that SCOPS failed to "adequately assess and properly value" her professional qualifications and licensure, overlooked critical evidence such as her business plan and recommendation letters, and reached a conclusion inconsistent with the facts and law. After de novo review, we conclude that the Petitioner has not satisfied the first prong of the *Dhanasar* framework requiring a proposed endeavor to be of national importance.

The Petitioner contends she has demonstrated that she has met her burden by "providing clear, substantial, and convincing evidence that" her proposed endeavor has substantial merit and national importance, and that she is well positioned to advance the endeavor. With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. *Id.* at 376. To determine whether a petitioner has met their 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*

The Petitioner maintains that her in-home healthcare business is of national importance because the in-home healthcare and physical support industry plays an important role in the United States, including optimizing healthcare system resources, reducing excessive healthcare costs, and meeting healthcare needs of elderly people. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Petitioner's work. The relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the [petitioner] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "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.* 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, while the Petitioner's endeavor may have merit, the evidence does not establish that operating an in-home healthcare company will have broader implications or influence in the in-home healthcare field that will rise to the level of national importance.

The authors of the recommendation letters praise the Petitioner's professional achievements and technical skills. The author of the expert opinion letter emphasizes that the Petitioner's proposed endeavor addresses a critical and expanding need within the United States healthcare system, particularly in home healthcare. The expert adds that the Petitioner's endeavor aligns with "current trends in healthcare industry." The Petitioner also emphasizes her several years of professional experience in the healthcare and nursing field. Here, although the Petitioner's endeavor may address

needs in the healthcare field, the record does not establish that the endeavor will have a measurable impact beyond the Petitioner's clients and patients to reach the level of national or even global impact. Moreover, although an individual's experience, qualifications, contributions, and achievements are material, they are misplaced in the context of the first *Dhanasar* prong. The Petitioner's professional experience and accomplishments are generally material to *Dhanasar*'s second prong—whether an individual is well positioned to advance a proposed endeavor—but they are generally immaterial to the first *Dhanasar* prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91.

The Petitioner proclaims that her proposed endeavor will generate substantial economic benefits and produce both direct and indirect employment opportunities. She claims that her business will create eight direct jobs in its first year, establish three franchises by the third year, and expand to 18 franchises by the fifth year. She further claims, through her business plan, that her endeavor will garner a total revenue of $3,064,915.20 by its fifth year. However, the Petitioner does not provide sufficient detail regarding the basis for these projections or adequately explain how the proposed staffing targets, business expansion plans, and revenue forecasts will be reached. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to her future work, the record does not show that the benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 890.

The petitioner contends that her endeavor "addresses a workforce shortage but also enhances healthcare accessibility, reduces system costs, and supports the sustainability of critical public health infrastructure." The Petitioner further contends that "the Home Health Care and physical Support market plays a crucial and comprehensive role in responding to health care needs in the United States, promoting efficiency, qualify of life, and national economic development, particularly during the COVID-19 pandemic." While we acknowledge the healthcare industry's importance, the relevant question when determining whether a proposed endeavor would have national importance is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Although the Petitioner also argues that her endeavor aligns with government initiatives, alignment with government initiatives alone is not sufficient for national importance. Here, the record lacks adequate corroborating evidence that the Petitioner's proposed endeavor offers broader implications in her field or substantial positive economic effects for the country that rise to the level of national importance.

Though we acknowledge the Petitioner's skills and experience in the nursing and healthcare fields, the Petitioner has not provided sufficient evidence that her endeavor would resolve the shortage or that her endeavor would stand to provide substantial economic benefits in Florida or the United States. We further note that the Department of Labor (DOL) has addressed the shortage of nurses by designating professional nursing as a "Schedule A" occupation. A "Schedule A" occupation is one codified at 20 C.F.R. § 656.5(a) for which the DOL has determined there are not sufficient U.S. workers who are able, willing, qualified and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in such occupations. This designation exempts U.S. employers of alien nurses from having to test the labor market and obtain a certified ETA 9089 (Application for Permanent Employment Certification) from the DOL prior to

filing the petition with USCIS. Instead, the petition is filed directly with USCIS with an uncertified ETA 9089 in duplicate. *See* 8 C.F.R. § 204.5(a)(2); *see also* 20 C.F.R. § 656.15. However, this is not a waiver of the job offer requirement, and as such it does not support a finding that nursing-related work inherently has national importance in the context of a national interest waiver petition.

C. The Remaining *Dhanasar* Prongs

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. *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).

## III. CONCLUSION

The Petitioner has not established the national importance of her proposed endeavor, and she does not meet the first prong of the *Dhanasar* analytical framework. Consequently, the Petitioner has not demonstrated that she is eligible for or merits a waiver of the job offer and labor certification requirements in the national interest as a matter of discretion.

**ORDER:** The appeal is dismissed.