U.S. Citizenship and Immigration Services

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

In Re: 31113134

Date: MAY 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, seeks second preference immigrant classification (EB-2) 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 EB-2 immigrant 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 qualify for the EB-2 classification as a member of the professions holding an advanced degree and did not establish that a waiver of the required job offer, and thus of the 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 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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish 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 (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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

*Id.* at 889.

## II. ANALYSIS

The Petitioner initially noted on the Form I-140 that she will work as a chief executive officer (CEO) and explained in the letter dated February 18, 2023, that her endeavor is to operate her own company, [redacted] in Florida. The Petitioner stated that the company will provide "a complete and cost-effective course, seminars, webinars and training" on implementing infection disease control to "health-related professionals (hospitals, surgical centers, ambulatory clinics, long-term care facilities such as nursing homes and rehabilitation facilities, dental offices, veterinary clinics)." The record shows that the Petitioner obtained a bachelor's degree in nursing in 2013 from the [redacted] in Brazil and has worked as a nurse since 2014. The Petitioner also submitted additional "Lato Sensu" degrees in hospital management and infection prevention which are described as "U.S. master's degree equivalent" in the academic credential evaluation submitted on record.

The Director concluded that the Petitioner did not demonstrate that she is eligible for the EB-2 classification as an advanced degree professional, noting that the Petitioner's "Lato Sensu" degrees are not graduate degrees and that her employment experience did not show progressive experience in the specialty. On appeal, the Petitioner contends that "an Advanced Degree can also be defined as having a bachelor's degree and at least five years of progressive post-baccalaureate experience in the specialty." We agree with the Petitioner and withdraw the Director's finding on this issue.[2]

[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).

[2] Nevertheless, we reject the Petitioner's additional claim on appeal that the Director's decision on "Lato Sensu" degrees is a "groundless determination . . . , concluding unilaterally from online tools (AACRAO e EDGE)." The American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE) is a highly respected program used by certified credential evaluators. AACRAO notes that "[p]rofessional development and specialization programs are considered lato sensus (wide sense graduate-level programs) and follow independent legislation. Such programs lead toward professional certificates, not graduate degrees." It also states that "[c]redits earned in lato sensu graduate programs may later be transferred into a master's degree program given that institutional requirements are met and institutional approval is granted."

Here, the Petitioner submitted her diploma and academic transcripts of a bachelor's degree (Grau de Bacharel) in nursing and employment letters as well as recommendation letters demonstrating that she has worked as a nurse for more than five years, satisfying the requirements under 8 C.F.R. § 204.5(k)(3)(i). Considering the evidence in totality, we conclude the Petitioner has established, more likely than not, that she possessed the foreign degree equivalent of a bachelor's degree in nursing and at least five years of progressive post-baccalaureate experience in the specialty at the time of filing of the petition in accordance with 8 C.F.R. § 204.5(k)(2).

We now turn to the Petitioner's eligibility for the national interest waiver under *Dhanasar*. The Director determined that the Petitioner's proposed endeavor has substantial merit but not national importance.[3] On appeal, the Petitioner makes various contentions regarding the Director's erroneous conclusions. We note that the brief on appeal is an exact copy of the Petitioner's August 22, 2023 letter in response to the Director's request for evidence (RFE). While we will evaluate the Petitioner's claims as they have not been addressed in the Director's decision, ultimately, they are unpersuasive and we agree with the Director's conclusion that the Petitioner did not establish her endeavor's national importance, as discussed below.

In determining national importance, the relevant question is not the importance of the field, industry, or professional in which the individual will work; instead, the focus is on the "the specific endeavor that the foreign national proposes to undertake" and the endeavor's "potential prospective impact." *Dhanasar,* 26 I&N Dec. at 889. Instead of discussing the details of the Petitioner's proposed endeavor and any unique methodologies in the infection control and prevention, the evidence supporting the national importance largely consisted of general articles and reports on the importance of preventing and controlling infection in hospital and clinical settings, the nursing shortage, and the projected growth of the medical and health education market. The Petitioner also asserted that the endeavor is aligned with government priorities on fostering entrepreneurship, global health worker initiatives, and supporting STEM degrees. However, these articles and reports do not provide any specific information about the Petitioner's proposed endeavor and are insufficient to establish national importance of the endeavor.

The Petitioner highlights on appeal the expert opinion letter by Dr. [redacted], a professor in the nursing department of the [redacted] in New York. The opinion letter reiterates the Petitioner's education and experience, opines on the importance of the infection prevention and control (IPC) within the healthcare industry, and states that the Petitioner's company "holds the potential to revolutionize the way IPC is perceived and practiced," leading to "elevate U.S. healthcare standards" and "pave the way for a safe, more efficient global healthcare landscape." However, the discussion of national importance does not include the specifics of the Petitioner's methodologies or how the benefit from the Petitioner's educational resources would extend beyond her own clients to reach national importance and meet the requirements of the first *Dhanasar* prong.

Similarly, the recommendation letters written by the Petitioner's former colleagues indicate a high regard for the Petitioner and her work as a nurse but do not discuss the Petitioner's proposed endeavor or its broad impact on the industry. USCIS may rely on such letters in its discretion, but USCIS is ultimately responsible for making the final determination regarding an individual's eligibility for the

[3] The Director also found that the Petitioner did not meet the second or third prongs of the *Dhanasar* analytical framework.

benefit sought. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). 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).

The Petitioner claims that the Director "raised unfounded concerns about the company's operations scale" and that "the services provided by the [Petitioner's company] are rooted in the dissemination of technical knowledge and the elevation of professional standards." However, the Petitioner does not demonstrate how her proposed endeavor will substantially benefit the health industry and the field of infection prevention, as contemplated by *Dhanasar*: "[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." *Id.* at 889. Here, the Petitioner has not submitted corroborating evidence to demonstrate the impact of her educational resources or training methods rising to the level of national importance or suggested that her methodologies somehow differ from or improve upon those already available and in use in the United States.

We also noted 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, for instance, may well be understood to have national importance." *Id.* at 890. In terms of job creation, the Petitioner's business plan projects hiring 22 direct employees by the fifth year and utilizes the Regional Input-Output Modeling System (RIMS II) multipliers for "Other educational services" in Florida to estimate "a creation of 136 jobs" in five years. The plan also claims that the total taxes collected "will reach about $755k in federal and state taxes" by the fifth year of the business activities. However, the business plan does not provide sufficient detail of the basis for these projections, including the multiplier evidence itself, or adequately explain how these staffing and tax collection targets will be realized. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. In addition, the record does not indicate that the location of the business and its proposed operations are in an economically depressed area.

The Petitioner contends that she submitted "concrete and relevant evidence" in the business plan and that the Director erred in characterizing them as "broad assertions." The Petitioner claims that the business plan shows that the endeavor will provide substantial economic impact "in the region and the country at large" through job creation, both direct and indirect, and tax collection. The Petitioner also claims that the endeavor will "significantly [boost] the purchasing power of her employees' families" and "in turn, [lead] to a consideration increase in demand for retail goods, resulting in more contracts for suppliers and producers" and "[create] new business opportunities that lead to higher profits and net values." We acknowledge that any offer of goods or services has the potential to impact the economy; however, the Petitioner's claims of economic benefits are not supported by corroborating and independent evidence.

The Petitioner has not provided evidence to support that her endeavor as a nurse and CEO of her business would have substantially positive economic effects or otherwise have broader implications beyond a limited number of clients to impact the field more broadly at a level commensurate with national importance. Therefore, we conclude that the Petitioner did not establish national importance

of the proposed endeavor and does not meet the first prong of *Dhanasar*. As such, we decline to reach and hereby reserve the Petitioner's arguments regarding her eligibility under the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, 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.