U.S. Citizenship and Immigration Services

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

In Re: 40061468

Date: NOV. 17, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a 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).

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Petitioner qualified for classification as a member of the professions holding an advanced degree or an individual of exceptional ability, and that a discretionary 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 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 non-citizen must possess a U.S. doctorate or a foreign equivalent degree. *Id*.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

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).[2] 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. *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,[3] 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 offer health consulting services through her company, [redacted]. SCOPS denied the petition, concluding that the Petitioner did not establish that she qualified for the underlying classification. SCOPS also found that the Petitioner failed to establish a discretionary waiver of the required job offer, and thus of the labor certification, would be in the national interest.

### A. EB-2 Classification

SCOPS concluded that the Petitioner did not qualify for the EB-2 classification as an advanced degree professional nor as an individual of exceptional ability. With regard to the advanced degree classification, SCOPS determined that the Petitioner submitted evidence of a U.S. equivalent to a

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

[2] 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).

[3] *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).

bachelor's degree in nursing. However, SCOPS concluded that the Petitioner did not establish eligibility as an advanced degree professional because she did not demonstrate at least five years of progressive experience in the specialty. With respect to the Petitioner's eligibility as an individual of exceptional ability, SCOPS determined, without providing sufficient analysis, that the Petitioner met at least four of the six criteria. SCOPS then conducted a final merits determination and concluded the Petitioner had not shown by a preponderance of the evidence that she possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

While SCOPS did not provide sufficient analysis and explanation on how the Petitioner met four of the six criteria, we find no reason to remand the matter as the resolution of the issues regarding the Petitioner's eligibility for a waiver of the job offer requirement, and thus of a labor certification, under the *Dhanasar* analytical framework is dispositive of this appeal. For that reason, we will reserve consideration of the Petitioner's eligibility for the requested EB-2 category.[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

B. The Proposed Endeavor's 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.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

SCOPS concluded that the Petitioner's proposed endeavor has substantial merit. SCOPS determined, however, that the Petitioner did not establish the proposed endeavor is of national importance, that she is well positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement. We agree.

The Petitioner's proposed endeavor is to "establish health consulting services focused on occupational safety, regulatory compliance, and public health advocacy, particularly within underserved, economically vulnerable communities." The Petitioner further asserts that she plans to provide "training, education, audits, and guidance" on Occupational Safety and Health Administration and Centers for Disease Control and Prevention compliance, and that her work will directly advance "public health infrastructure, workforce resilience, and organizational preparedness." The record includes academic credentials, a resume, an expert opinion letter, a business plan, recommendation letters, and industry reports and articles. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

In denying the petition, SCOPS concluded the Petitioner did not demonstrate that the prospective impact of her proposed endeavor would rise to the level of national importance, that it would offer

[4] We note that the Petitioner's signature on the Form I-140 and her signature on the Form I-290B are visibly different. However, because we will be dismissing the appeal on other grounds, we will also reserve our analysis and consideration of the signature issue.

national implications for her industry, or that its implications would impact her field more broadly. On appeal, the Petitioner contends that SCOPS misinterpreted and narrowly interpreted *Dhanasar*. She maintains that she "presented strong arguments supporting her proposed endeavor's national importance." The Petitioner states that she will address a national need by enhancing the quality of community health and preventive healthcare consulting services across the United States. 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 a healthcare consulting company will have broader implications or influence in the healthcare field that will rise to the level of national importance.

The Petitioner claims that her endeavor "offers immediate and medium-term employment opportunities and has indirect economic benefits for the businesses served." She states that her business is projected to generate $120,000 in total revenue under a pessimistic scenario, or $180,000 under an optimistic scenario, during its first year. She further states that by the fifth year, projected total revenue will reach $442,787 under a pessimistic outlook or $619,901 under an optimistic one. She also indicates that she will hire two full-time and two part-time employees in the first year, with plans to expand to six full-time and 10 part-time employees by the third year. However, the Petitioner does not provide sufficient detail regarding the basis for these projections or adequately explain how the proposed staffing targets 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 asserts that her proposed endeavor "advances occupational health, public health infrastructure, and workforce wellness." She further states that her work aligns with "national objectives on health equity, community health education, and infrastructure modernization in public health." While we recognize the importance of the Petitioner's field, 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 Petitioner proposed to undertake. *Id.* at 889. Furthermore, alignment with general national goals, in and of itself, does not necessarily establish that the Petitioner's endeavor rises to the level of national importance. Here, the record does not include adequate corroborating evidence, to show that the Petitioner's specific proposed endeavor offers broader implications in her field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance.

The petitioner affirms that she will fill the gap of qualified nurses in the United States by providing her services and emphasizes the existing shortage of healthcare workers, including nurses. Though we acknowledge the Petitioner's desire to contribute to the healthcare field, the Petitioner has not provided sufficient evidence that her specific endeavor would resolve the shortage or that her endeavor would stand to provide substantial economic benefits in 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.

The author of the expert opinion letter states that the Petitioner's endeavor directly addresses nationally significant challenges in workforce safety, health education, and risk mitigation by providing comprehensive consulting and training solutions that help businesses comply with health regulations and protect their employees. The author further states that the Petitioner's endeavor has significant national and global implications and that her initiative aligns with "international efforts to enhance worker well-being, reduce occupational hazards, and promote sustainable economic development." 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. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *See Dhanasar*, 26 I&N Dec. at 893. 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

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.

**NOTICE:** This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.