U.S. Citizenship and Immigration Services

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

In Re: 34511556

Date: NOV. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest**.** On appeal, the Petitioner submits additional documentation and asserts that he is eligible for the benefit sought. 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 a national interest waiver, a petitioner must first show eligibility 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. If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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, 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.

[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).

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

## II. ANALYSIS

The Director determined that the Petitioner did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we conclude that the Petitioner has not met the first prong of the *Dhanasar* framework and will dismiss the appeal accordingly.

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

In the initial filing, the Petitioner stated that his proposed endeavor was to establish and operate a dental practice that that will "provide innovative and life-changing dental implant procures based on modern techniques that dramatically reduce rehabilitation time." In support, the Petitioner submitted, in pertinent part, a business plan, corporate documents, a resume, work experience letters, letters in support, and industry reports and articles about dentists and the dental industry in the United States. The Director issued a request for evidence in which they requested, in part, additional evidence to establish that the Petitioner's proposed endeavor had national importance. While the Director noted that the Petitioner's intentions were to open and operate dentist offices in three locations, the proposed endeavor did not indicate "broad societal welfare or cultural or artistic enrichments." The Director also determined that while the Petitioner had stated that he intended to employ 40 individuals over the span of five years at three different locations in the United States, the evidence in the record did not sufficiently demonstrate the prospective impact of the Petitioner's proposed endeavor extended beyond the Petitioner's business intentions, employer, or clients to have a broader impact on the local or national economy as contemplated by *Dhanasar*.[2]

In response to the request for evidence, the Petitioner asserted that he would develop a business in the United States which would provide "innovative and life-changing dental implant procedures based on modern techniques that dramatically reduce rehabilitation in the states of Florida and New York, qualified HUBZone, which links his proposed endeavor to a national initiative and, therefore, **National Importance**." (emphasis in original). The Petitioner further stated that his company "is set to transform the landscape of dental care by providing secure and permanent replacement teeth that

[2] The Director also requested additional documentation to establish the second and third *Dhanasar* prongs.

enable patients to regain normal chewing and speaking functions" focusing on "advanced, less-invasive dental implant techniques."

The Director denied the petition. The Director acknowledged and discussed the Petitioner's submission of evidentiary documents. Nevertheless, the Director determined that the record did not establish that the Petitioner qualified for a national interest waiver because he did not meet the 3-prong *Dhanasar* framework. In regard to prong one, the Director determined that although the Petitioner's proposed endeavor had substantial merit, the record did not demonstrate the proposed endeavor had national importance, as the record lacked independent objective evidence of the Petitioner's future plans. The Director concluded that the Petitioner had not established that the potential prospective impact of the Petitioner's specific proposed endeavor to develop his dental practice had implications beyond the individuals the Petitioner would serve.

As a preliminary matter, the Petitioner asserts on appeal that in denying the petition, the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard." An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v). Although the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not specify, as required, in what way the Director applied this stricter standard.

The Petitioner further highlights on appeal the evidence he submitted in support of his petition and in response to the Director's request for evidence and maintains that he has demonstrated the proposed endeavor's national importance. He again asserts that his proposed endeavor "is set to transform the landscape of dental care by providing secure and permanent replacement teeth that enable patients to regain normal chewing and speaking functions." However, the Petitioner has not provided evidence on appeal to demonstrate that his work as a dentist in the context of his own dental practice would result in an impact of regional or national importance or that he would operate on such a scale as to rise to the level of national importance.

The Petitioner also emphasizes on appeal the shortage of dentistry professionals, and the importance of the dental industry and immigrant entrepreneurs, and claims that his endeavor impacts the national economy. As previously mentioned, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Although the Petitioner states his endeavor is of national importance, he has not, for example, sufficiently explained how he will positively impact the U.S. economy and create direct and indirect jobs to move the U.S. economy on a broad scale rising to the level of national importance. While the Petitioner referenced the Small Business Administration (SBA) HUBZone program, he has not shown that the program confirms the national impact of her proposed endeavor. The SBA program aims to award a certain percentage of federal contract dollars to HUBZone-certified companies.[3] The record does not indicate

[3] The Small Business Administration (SBA) website provides: "The HUBZone program fuels small business growth in historically underutilized business zones with a goal of awarding at least 3% of federal contract dollars to HUBZone-certified companies each year." The SBA website further explains that "[j]oining the HUBZone program makes [a] business eligible to compete for the program's set-aside contracts" and that "HUBZone-certified businesses also get a 10% price evaluation preference in full and open contract competitions." https://www.sba.gov/federal-contracting/contracting-

that the Petitioner's proposed endeavor involves HUBZone-certified companies or has any association to federal contracts. To the extent that he is arguing his proposed endeavor has the potential to positively impact historically underutilized business areas, in part, by preserving or creating jobs, the record does not include sufficient evidence showing any projected U.S. economic impact or job creation directly attributable to his proposed endeavor rises to the level of national importance or will likely impact the insurance field. It is also important to note that the shortage of dentistry professionals does not render the Petitioner's proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

While the evidence of record indicates that the Petitioner has extensive experience and an understanding of dentistry, including dental implants, the record does not include a plan or other indication of how the Petitioner will operate a dental practice that will impact businesses or the economy at the level of national importance contemplated under the first prong of the *Dhanasar* framework. The Petitioner has not established on appeal that his intent to apply his knowledge to his prospective clients is an activity that will have a broad impact on the economy. The record does not offer evidence sufficient to translate *how* the Petitioner's specific work stands to sufficiently impact U.S. interests or the relevant dentistry business more broadly at a level commensurate with national importance.

In addition, the Petitioner contends that his "business achievements and expertise throughout over eleven (11) years of work experience" have set him up to "help the U.S. stay competitive by bringing competitive services, helping develop the country, and producing income for the U.S. economy." While the Petitioner stresses his credentials and work experience, which were also highlighted in his résumé, work experience letters, and letters in support, such evidence addresses the Petitioner's knowledge, skills, education, and experience; these are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar,* 26 I&N Dec. at 890. Evidence of the Petitioner's credentials and experience in dentistry does not demonstrate the national importance of the proposed endeavor or establish that the impact of the endeavor would extend beyond the Petitioner's patients and prospective employers. In sum, the Petitioner primarily focuses on second prong factors that demonstrate his knowledge and experience.

Though we acknowledge the Petitioner's assertions and the evidence he submitted in support of his petition, we conclude that the Petitioner has not shown his proposed endeavor stands to sufficiently extend its benefits beyond his customers and the companies he elects to work with to enhance societal welfare on a broader scale indicative of national importance. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility

assistance-programs/hubzone-program, accessed on May 10, 2024, a copy of the online material has been incorporated into the record of proceedings.

for a national interest waiver. Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 a noncitizen is otherwise ineligible). The petition will remain denied.

## III. CONCLUSION

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

**ORDER:** The appeal is dismissed.