



**U.S. Citizenship
and Immigration
Services**

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

MATTER OF J-M-C-

DATE: JUNE 28, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a medical researcher and psychiatrist, seeks second preference 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she 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 argues that she is eligible for a national interest waiver and that the decision contained "erroneous conclusions of law and fact." In May 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*. The Petitioner did not respond to our RFE.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYS DOT*).

performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

On appeal, the Petitioner indicates that she works as a "medical scientist/entrepreneur" specializing in psychiatry. She states that she intends to "establish a psychiatric clinic and mental health education center" where she can share her "special knowledge and experience with other medical researchers, psychiatrists, psychologists, and patients." Since *Dhanasar* was issued before we adjudicated the petition, we issued an RFE to obtain additional information and evidence regarding the Petitioner's eligibility under the new framework. See 8 C.F.R. § 103.2(b)(8) (requests for evidence).

A. Appeal Abandoned

We may summarily dismiss an appeal if the Petitioner does not respond to our RFE. The regulation provides, in pertinent part:

If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons.

8 C.F.R. § 103.2(b)(13)(i). Our RFE specifically informed the Petitioner that "[w]e may dismiss your appeal if we do not receive your response to this RFE **within 48 days of the date on the cover letter**. This time period includes 3 days added for service by mail." (Emphasis in original.) To date, more than 48 days have lapsed, and we have yet to receive a response from the Petitioner on issues we discussed in the RFE. As such, we will summarily dismiss the appeal as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

B. Eligibility under the *Dhanasar* framework

In the alternative, we find that the Petitioner has not demonstrated that she satisfies the requirements set forth in *Dhanasar*. First, the record does not sufficiently demonstrate that the proposed endeavor has substantial merit and national importance under *Dhanasar*'s first prong. While the Petitioner indicates that she intends to "establish a psychiatric clinic and mental health education center," she has not provided sufficient details about the size, location, and staffing of this establishment, nor has

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

she provided information about the population she proposes to serve or the topics she aims to research. Without additional information and evidence, the Petitioner has not established the implications of her proposed endeavor or its potential prospective impact on the United States.

With respect to the second prong of the *Dhanasar* analysis, the Petitioner has not demonstrated a record of success or progress in her field, or a degree of interest in her work from relevant parties, rising to the level of rendering her well positioned to advance her proposed endeavor. *See Dhanasar*, 26 I&N Dec. at 890. The record includes a copy of the Petitioner's résumé, documentation of her attendance at conferences and seminars, professional memberships, and medical training credentials. The record also contains treatment protocols and records including obesity treatment, obesity injection therapy, aromatherapy, vitamin injection therapy, and Myers' cocktail treatment. She has not explained whether she developed these treatments, the extent to which they have been used by other interested parties, or otherwise described how they show a record of success in her field or interest in her work from relevant parties.

Furthermore, the reference letters discussing the Petitioner's work do not provide sufficient detail explaining how her work renders her well positioned to advance the proposed endeavor. For example, Dr. [REDACTED] a professor at [REDACTED] commented that the Petitioner's skills and expertise set her apart from other psychiatrists in the field, and Dr. [REDACTED] senior doctor at [REDACTED] wrote that the Petitioner's "most noticeable accomplishment" is her "unique methods to treat difficult mental diseases numerous time and allowed patients to regain their normal life and become healthy member of society (*sic*)." These are general statements affirming the Petitioner's clinical acumen; however, they do not indicate, for example, that her findings have been employed by government or private sector entities, that her work has affected psychiatric treatment practices, or that her clinical practice otherwise renders her well positioned to advance the proposed endeavor.

In addition, the Petitioner stated that she intends to establish a psychiatric clinic and mental health education center in the United States. However, she has not provided evidence or information demonstrating a history of success in any similar entrepreneurial endeavors, showing the interest of relevant parties in her proposal, documenting how she will secure funding, or otherwise establishing that she is well positioned to start the business she described.

Finally, the Petitioner has not established that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. She has not, for instance, sent information or evidence outlining why a labor certification would be impractical in her case; whether the United States would benefit from her contributions even if other U.S. workers are also available; or whether urgency warrants foregoing the labor certification process.

III. CONCLUSION

As the Petitioner did not respond to our RFE seeking evidence to establish eligibility, the appeal is considered abandoned. In addition, as the Petitioner has not met the requisite three prongs set forth in

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the *Dhanasar* analytical framework, we find that she has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of J-M-C-*, ID# 123352 (AAO June 28, 2017)