



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

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

In Re: 18658465

Date: JAN. 12, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a dentist, 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).

The Director of the Nebraska Service Center denied the petition, concluding 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 a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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 set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, 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.

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 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)

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<sup>1</sup> 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*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

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.<sup>3</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that her proposed endeavor in the United States is to continue working in the dentistry industry initially as a dental assistant under the supervision of a United States licensed dentist or as a dental consultant where she will "help increase revenue in an already established office" by managing the dental office. The Petitioner also stated that she is currently enrolled in a Doctor of Dental Surgery program in the U.S. until May 2022 and plans to open her own dentistry office after passing her board exams. On appeal, the Petitioner indicates she "aims to actively apply her dental and public health expertise in furthering research in areas such as oral medicine, orofacial pain, and dental public health, as well as teaching younger professionals and applying her advanced expertise in clinical dentistry, all of which will contribute to the development of the dentistry field and enhance the population's health."

The record includes articles indicating the U.S. is suffering a shortage of dentistry professionals. In addition, the Petitioner provided reports and articles indicating the U.S. has a concerning lack of dental coverage available for low-income populations leading to poor oral health as well as other physical and mental health issues. The record therefore supports the Director's determination that the Petitioner's proposed work as a dental assistant or dental consultant has substantial merit.

In determining national importance, the relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake."<sup>4</sup> 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.

In her appellate brief, the Petitioner points to her background, education, work experience, and specialized training in her field. The Petitioner's knowledge, skills, and experience in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> The issue here is not the value of the dentistry industry or the impact of dental consulting on our country's economy, but rather whether the Petitioner's specific proposed endeavor as a dental assistant or dental consultant rises to the level of national importance.

foreign national.” *Id.* at 890.<sup>5</sup> The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*’s first prong. To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work.

In support of her proposed endeavor, the Petitioner submitted letters from two dentists located in Southern Florida indicating their intention to hire the Petitioner. [redacted] owner of [redacted] Dentistry of South Florida, stated he is opening a second clinic and is interested in hiring the Petitioner as a dental assistant or consultant to work in one of the clinics. [redacted] owner of [redacted] Dental in Southern Florida, stated she is interested in hiring the Petitioner to work as a general practitioner within the Petitioner’s chosen specialty after completing her educational and licensing requirements. The letters did not specify the Petitioner’s job duties or the number of hours spent in a clinical setting working with patients versus conducting research.

The Petitioner further argues that her proposed work as a dental assistant, consultant, and dentist “motivates social opportunities and prompts dental care and oral health developments that improve the functionality of the nation’s healthcare sector – all of which respond to an evident national crisis,” but she does not offer specific examples of such impact. She also contends that her undertaking has national implications for the United States, particularly in the field of dentistry, where there already is such a shortage of professionals.

Finally, the Petitioner argues that her research in Brazil “made an impact in the national and international dentistry arena because it proved the importance of the dentist as a member of the multidisciplinary and interdisciplinary team in the hospital context.” She argues her professional research record mirrors how her work has impacted the dentistry industry and she will use her proposed endeavor to further her research.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. Here, the Petitioner’s evidence does not indicate that her proposed work has broader implications for her field, as opposed to being limited to the patients seeking care at the clinics she intends to work. While the Petitioner offered articles indicating that both the United States and Florida face a shortage of dentistry professionals, this reported shortage does not render the work of an individual dentist nationally important under the *Dhanasar* framework.<sup>6</sup> In general, the value of qualified dentistry professionals to U.S. health care is collective, and the Petitioner has not shown that her proposed work as a dental assistant, consultant, or licensed dentist stands to have wider implications in the field of dentistry. Additionally,

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<sup>5</sup> To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing her expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

<sup>6</sup> We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.

while the Petitioner claims her previous research indicates she will use her proposed endeavor to conduct nationally important research, her proposed endeavor does not indicate the amount of time she would spend outside of her clinical duties conducting research.

The Petitioner's documentation does not demonstrate that her proposed endeavor is of national importance under the *Dhanasar* framework. While we acknowledge the merits of her work to create a holistic approach to dentistry and healthcare as well as conducting beneficial research, the record does not demonstrate that the Petitioner's proposed activities offer benefits that extend beyond her employers or own dentistry practice to impact the field of dentistry more broadly.<sup>7</sup>

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. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she 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, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.

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<sup>7</sup> Likewise, 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. *Id.* at 893.