



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

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

In Re: 22644800

Date: NOV. 14, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a medical scientist in the field of dentistry, 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 Texas Service Center denied the petition, concluding that the Petitioner qualifies as a member of the professions holding an advanced degree, but that the record did not establish that a waiver of that visa classification's job offer requirement would be in the national interest. On appeal, the Petitioner asserts that the Director did not consider all of the evidence in the record.¹

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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

¹ The Petitioner indicated on Form I-290B that she would submit a brief within 30 days of filing her appeal, but as of the date of this decision we have not received a brief.

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.

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

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.

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. 884.² *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a 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.³

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.

² 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) (*NYSDOT*).

³ To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their 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, they must go beyond demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise to establish eligibility for a national interest waiver. See *Dhanasar*, 26 I&N Dec. at 886 n.3.

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) 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.⁴

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

The Director found that the Petitioner established that she qualifies as a member of the professions holding an advanced degree through evidence of a foreign degree equivalent to that of a U.S. bachelor's degree in dentistry and five years of progressive post-degree working experience as a dental surgeon. Upon review, we note that the credential and experiential evaluation she submitted offers conflicting assessments of the equivalency of her Title of Dental Surgeon degree from the [redacted] University of [redacted] in Brazil. It first indicates that it is equivalent to a Doctor of Dental Surgery degree from an accredited institution of higher education in the United States, but later states that the degree combined with 12 years of professional experience is equivalent to a U.S. Doctor of Dental Surgery degree. These conflicting assessments, and the lack of a detailed review of the course hours earned, render this evaluation unreliable and of no probative value.

Nevertheless, we reviewed the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. See generally American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, <https://www.aacrao.org/edge> (last visited Nov. 4, 2022). The database indicates that the professional title degree is comparable to a first professional degree in dentistry in the United States, which is a Doctor of Dental Surgery (D.D.S.) or Doctor of Dental Medicine (D.M.D.) degree. As the Petitioner has established that she qualifies as a member of the professions holding an advanced degree, the sole remaining issue is whether she merits a national interest waiver.

⁴ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

B. Substantial Merit and National Importance

When reviewing evidence under the first prong of the *Dhanasar* framework, we focus on the potential prospective impact of the specific endeavor proposed by the Petitioner. Here, as the Director noted in his decision, the Petitioner initially stated that she would work as a “medical scientist in the dental field,” in which she proposed to “help broaden the dental community’s understanding of oral health diseases,” “conduct dental research to improve practices and client satisfaction,” “advise dental professionals about cutting-edge research findings,” and “train newer generations of dental professionals.” She provided a new plan in response to the Director’s request for evidence (RFE), in which she stated that her proposed endeavor would be to open a dental clinic in the U.S. with a facial harmonization spa, and that her research activities would be limited to determining the best treatment for her patients. The Petitioner also indicated that she had recently been licensed as an esthetician in the state of Florida. Although she continued to indicate that she would advise and train other dental professionals, she did not elaborate on this aspect of her proposed endeavor.

The Director determined that the Petitioner’s proposed endeavor had substantial merit, since it would serve the medical interests of her patients. To the extent that she plans on receiving further education necessary to be licensed as a dentist in the United States, we agree.

As for national importance, we stated in *Dhanasar* that an undertaking having national or even global implications within a particular field may meet this requirement, but that the geographic breadth of an endeavor is deemphasized in favor of a focus on the broader implications to the field. Therefore, even a geographically limited endeavor, such as a dental clinic, may have national importance if the evidence shows its potential for broader implications, such as a significant potential to employ U.S. workers or other substantial positive economic effects, particularly in an economically depressed area. Here, the Petitioner asserted in her response to the Director’s RFE that she would hire staff for her dental clinic, including a receptionist and hygienists. While she submitted evidence regarding the formation of a company and her rental of commercial space, the record does not include evidence of projected earnings or hirings for this business, or that it is located in an economically depressed area. It has therefore not been established that this endeavor would have substantial positive economic effects.

The Petitioner also focused on the importance of dental health to overall health, and that her profession can substantially help the health of the population. While these points are undeniably true, they apply to the dental profession overall and not to her specific endeavor, operating a facial spa which will add dental services once she gets her license. As with the petitioner’s proposal to teach in the STEM field in *Dhanasar*, here the record does not show that the Petitioner would be engaged in activities that would impact the dental field or dental health more broadly.

For the reasons discussed above, we agree with the Director’s conclusion that the Petitioner has not established that her proposed endeavor is of national importance, and she therefore does not meet the first prong of the *Dhanasar* framework.

C. Well Positioned to Advance the Proposed Endeavor

In the second prong of the *Dhanasar* framework, the focus of the analysis turns from the endeavor to the petitioner. As noted above, we use several factors in determining whether a petitioner is well positioned to advance their endeavor, including education, experience, and a track record of success in similar endeavors. Here, the record shows that the Petitioner is a licensed dentist in Brazil and has worked as such for several years. However, she also acknowledges that in order to obtain a license to practice dentistry in Florida or another state, she would require additional education, and she does not indicate that she has already begun this education. As she is currently unable to legally advance her proposed endeavor, and has focused on obtaining certification as an esthetician rather than licensure as a dentist, this factor weighs strongly against her qualification under *Dhanasar*'s second prong.

Other factors include a model or plan for future activities, and the interest of potential customers or other relevant entities or individuals. The Petitioner submitted evidence that she has established a company and rented commercial space to operate a facial spa, but did not include a business plan for this business specifically addressing the addition of dental services, or any projections of earnings or staffing. She also did not submit evidence of available funding for the start-up and operation of a facial spa and dental clinic, or the interest of any business partners or investors. While we do not require petitioners to establish that their endeavors are more likely than not to ultimately succeed,⁵ they still must establish by a preponderance of the evidence that they are well positioned to advance their endeavor. Here, given the Petitioner's lack of the required professional license, as well as the absence of a business plan leading to her operation of a dental clinic and evidence of interest from other relevant parties, she has not done so. Accordingly, we conclude that she has not established her qualification under the second prong of the *Dhanasar* framework.

D. Whether on Balance it Would be Beneficial to the United States to Grant a Waiver

As explained above, the third prong of the *Dhanasar* framework 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. The *Dhanasar* decision spells out possible factors to be weighed under this prong, including the impracticality of obtaining a labor certification and the urgency of the national interest in an individual's contributions. While the Petitioner does not address this prong on appeal, in her RFE response she suggested that she could help to address a shortage of dental professionals in the U.S. However, we note that a labor certification shows that the U.S. Department of Labor has determined that there are insufficient workers who are able, willing, qualified and available for a particular job opportunity, and is thus the appropriate means for qualification in the EB-2 classification for workers in fields where a labor shortage exists. Accordingly, a labor shortage in the Petitioner's field alone does not tilt the balance between protection of the domestic labor force and any national interest in his proposed endeavor in his favor. Further, since she has not shown that her proposed endeavor would be of national importance, or that she is well positioned to advance her proposal for a dental clinic, we conclude that it would not be in the national interest of the United States to grant her a waiver of the job offer requirement.

⁵ *Dhanasar*, 26 I&N Dec. at 890.

III. CONCLUSION

The Petitioner has established that she qualifies as a member of the professions holding an advanced degree. However, after review of the record, we conclude that the evidence does not establish that a waiver of that classification's job offer requirement would be in the national interest.

ORDER: The appeal is dismissed.