



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

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

In Re: 28980895

Date: DEC. 5, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a clinical and counseling psychologist, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established a 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. 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 establish eligibility for a national interest waiver, petitioners must demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or as an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. In addition, petitioners must show the merit of 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if:

- 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.

¹ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner's initial cover letter indicated:

. . . [The Petitioner] intends to advance her career as a Clinical and Counseling Psychologist, to assess, diagnose, and treat patients with psychiatric pathologies and to help improve communication and cognitive disorders in children and adults. She intends to provide high-quality care to patients with disorders or injuries that affect their cognitive and mental well-being. Her expertise and knowledge will contribute to the U.S. because of the growing demand for psychologists in schools and healthcare facilities.

[The Petitioner] intends to continue using her expertise and knowledge in the field of child counseling and psychology to help people improve cognitive skills related to mental and interpersonal communication. She has extensive experience working in clinical psychology, child counseling, CBT (Cognitive Behavioral Therapy), Filial Therapy, EMDR, and Transactional Therapy techniques. Through her 15 years of professional experience in child counseling and psychology, [the Petitioner] is qualified to accurately diagnose and treat persons of all ages in schools, hospitals, rehabilitation centers, and private practices. This will contribute to U.S. education and healthcare because of the growing demand for Clinical and Counseling Psychologist.

Further, the Petitioner's "Professional Plan & Statement" reflected:

. . . I intend to continue my career as a Psychologist in the United States. I intend to work with the U.S. healthcare system, providing expert advice to children and parents. In this role, I will transform the healthcare system for which I work into an efficient system because I understand dealing with a scarcity of resources and materials while providing quality and persistent treatment to reintegrate individuals back into society. My extensive career of working with children with a wide array of emotional problems will benefit the U.S. health industry, experiencing a shortage of Psychologists.

. . . .

[M]y professional goal is to be a Psychologist specializing in Psychological Counseling in the U.S. I will continue my career in the United States as a Psychologist and open my own private office where I can provide group therapy work like filial therapy

. . . .

I will educate child caretakers by group counseling either in the early childcare centers or in an office. I will arrange group counseling sessions for the families helping them to raise their babies or toddlers. I will apply the Filial Therapy method in these groups. Filial therapy provides parents with training in basic play therapy techniques to use these

techniques with their children. Parents can increase their listening skills, which will help them better understand their children

In response to the Director's request for evidence (RFE), the Petitioner submitted a "Definitive Statement" indicating:

I intend to continue my expertise and knowledge to work as a Clinical and Counseling Psychologist and Entrepreneur managing and operating my own company and contribute to the U.S. economy. I will do this by developing and expanding my existing business in the nation, [M-J-H-E-S-, LLC], a child-focused education center that will offer a professional teaching service.

I will pursue my endeavor by leveraging my vast professional experience in child psychology, carrying out several successful projects in my field. Additionally, I will seek to have all the complementary memberships necessary for my company to achieve the best possible results in the US. I will also continue my education in the field by attending courses from industry leaders and role models to improve company results towards its goals. In this capacity, I will generate jobs for U.S. workers, as well as create continuous, significant, and profitable opportunities for the national economy.

Regarding substantial merit, the endeavor's merits 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. The Petitioner provided "Industry Reports and Articles" on a wide range of topics pertaining to psychology, counseling, mental health, and other related areas, as well as a business plan for M-J-H-E-S-, LLC. Here, the Petitioner has shown the substantial merit of her proposed endeavor.

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 specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. Although she emphasizes her submission of "Industry Reports and Articles," the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her particular counseling services through her business rather than the importance of psychologists or the industry or field. In *Dhanasar*, we 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. We note here the Petitioner also contends the need for psychologists in the United States. However, the alleged shortage of an occupation does not render her 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.

In addition, the Petitioner repeatedly emphasizes her experience, skills, and knowledge. The Petitioner's experience and abilities in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue

here is whether the specific endeavor she proposes to undertake has national importance under *Dhanasar*'s first prong.

Moreover, 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. The Petitioner did not offer specific information and evidence to corroborate her assertions that the prospective impact of working as a clinical and counseling psychologist rises to the level of national importance. In *Dhanasar*, we determined 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. Here, the record does not show through supporting documentation how her specific services stand to sufficiently extend beyond her prospective clients or patients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Finally, although the Petitioner provided a business plan, the Petitioner did not demonstrate how her business' claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the revenue forecasts \$1.1M in year 1 to \$6.9M in year 5, the business plan does not establish the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, although the plan claims the business would create 15 positions in year 1 to 73 positions in year 5, the Petitioner did not show that such future staffing levels would provide substantial economic benefits to Florida or the region or U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not demonstrate that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not establish that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

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.²

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude she has not demonstrated eligibility 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.

² 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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).