



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

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

In Re: 28423359

Date: DEC. 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a dentist and entrepreneur, seeks second preference immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 did not qualify for the underlying classification or establish 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 a brief asserting his eligibility for a national interest waiver. 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, 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. Section 203(b)(2)(B)(i) of the Act. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.<sup>1</sup> 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).<sup>2</sup> Meeting

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<sup>1</sup> Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

at least three criteria, however, does not, in and of itself, establish eligibility for this classification.<sup>3</sup> If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 USCIS may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates that:

- 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.

## II. ANALYSIS

The Petitioner, a dentist and entrepreneur, outlines seven “Service Categories” that he will carry out through a dental company he plans to own and manage called [REDACTED] (the Company). The service categories include: diagnosis, implantology, pediatric dentistry, general dentistry, dental prosthesis, periodontics, and oral surgery. He provided two business plans to explain his duties at the Company, which include overseeing the operations, commercial, and financial strategies of the Company. Elsewhere in his business plan, the Petitioner explains he will be sole owner and a dentist at the Company, and that he will have four units providing healthcare and a mobile unit to provide healthcare access in rural and remote areas. We note that in the second business plan, one of the articulated goals of the Petitioner’s Company will be to “improv[e] access to oral healthcare for currently underserved rural populations through the Company’s mobile dental unit which will service the community . . . and give access[] to patients in the rural area of [REDACTED] county. . . The Company will . . . operate . . . in . . . other regions of the country.”

### A. EB-2 Classification

The Director determined that the Petitioner (1) did not establish that he is an advanced degree professional and (2) met at least three of the regulatory criteria for exceptional ability. However, the Director did not conduct a final merits determination to determine if the totality of the evidence demonstrates he is an individual of exceptional ability. On appeal, the Petitioner asserts that he is an advanced degree professional and an individual of exceptional ability within the meaning of section 203(b)(2)(B)(i) of the Act.

Upon de novo review, we will reserve review of the underlying EB-2 classification because, for the reasons discussed below, the Petitioner has not established that his proposed endeavor is of national importance under *Dhanasar*’s first prong. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating

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<sup>2</sup> 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).

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 the applicant did not otherwise meet their burden of proof).

## B. Substantial Merit and National Importance

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 Petitioner has established the substantial merit of the proposed endeavor as we generally consider the provision of necessary healthcare services, such as dental services, to be of substantial merit.

The Petitioner asserts that his proposed endeavor will provide access to rural and remote populations through an “innovative dental practice that [will employ a] . . . dental mobile unit . . .” He contends that by serving underserved populations, he will have a positive national, and even global, impact. He states that his clinic, which will be located in Florida, the country’s third most populous state, suffers from the “country’s worst situation of underserved population, with nearly 6 million people living in communities lacking enough dentists.” He asserts that the high rate of hospital emergency room visits for non-traumatic dental care, especially among individuals aged 14 and younger, has caused the state a financial burden. He claims that he will operate his mobile unit to provide access to 600 patients per year, which will save Florida \$31.64 million in hospitalizations due to preventable dental issues, and that the establishment of his Company will have broader economic effects that will positively affect the national interest, in part due to Florida’s large population.

In addition, he asserts that his proposed endeavor will lead to substantial economic effects and enhance societal welfare and that significant, broader economic impacts will flow from his Company. He describes how his endeavor will spread oral health awareness and dental literacy, which in the context of a national shortage of dental services for 70 million Americans, is in the national interest. He further asserts that his endeavor will impact scientific advancements because he will utilize innovative practices which will become a model for improved practices in other clinics and that he plans to invest in the most advanced technology to perform complex procedures to support advancements in the industry that will benefit patients by providing higher quality treatments, less invasive procedures, earlier diagnosis, and more affordable and efficient care. He also claims that his work will provide a new benchmark for dental practice, and through competitive market forces, improve dental care for the nation as a whole. The Petitioner contends that in addition to saving Florida from emergency dental services, the economic effects flowing from his business will include making investments, creating jobs, and stimulating the economy. He asserts that in turn, these activities will favor economic growth beyond the Company. In his business plans, it is projected that in the next five years, the Company will create between 116 and 143 indirect jobs, which he determined using the Regional Input-Output Modeling System (RIMS II).<sup>3</sup> He also argues his endeavor will broadly enhance societal

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<sup>3</sup> Public source information shows that “RIMS II multipliers were developed by the U.S. Bureau of Economic Analysis as a tool to help economists analyze the potential impacts of economic activities on regional economies. They are now used by investors, planners, and elected officials to objectively assess the potential of economic impacts of various projects within a single region.” *See* <https://guides.library.upenn.edu/RIMSIIdata>.

welfare because his post-operative care is less costly and intensive due to his surgical expertise. He asserts that he plans to operate an Oral Disease Prevention Program to reduce the needs of patients post-operatively and will accept insurance for dental care, as well as give patient's payment plans resulting in more people getting access to his services. Finally, he asserts that better smiles will equate to better employment options for his patients, which will improve societal welfare.

We acknowledge the Petitioner's foregoing arguments and applaud his commitment to employ his dental training and entrepreneurial drive with a keen focus on underserved communities. However, assertions without more are insufficient to conclude that an endeavor is of national importance. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

The Petitioner stresses that the Company will provide dental services at a time when there is a talent shortage of dentists and oral health practitioners. While that may be the case, the labor certification process exists to address labor shortages. The issue here is whether the Petitioner has established that his proposed endeavor has national importance.

To evaluate the Petitioner's claim that his proposed endeavor will have a job creation multiplier effect, he must provide more specific information or evidence to understand how any positive job creation would be attributable to his future work. Moreover, the RIMS II modeling tool used by the Petitioner to project job creation relies on various assumptions, which makes it an insufficient basis to support his argument. *See, <https://www.bea.gov/news/blog/2020-08-03/bea-updates-regional-economic-tool>*. Regardless, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*.

The Petitioner provided an opinion letter from an associate professor and director of a university's Oral Pathology laboratory. The letter opined that the Petitioner's qualifications, to include his membership in professional organizations, credentials, education, and work experience, make his endeavor of substantial merit and national importance. These qualifications, however, speak to whether the Petitioner is well positioned to advance the endeavor, which is relevant to *Dhanasar's* second prong. Beyond discussing the Petitioner's qualifications, the opinion argues that the Petitioner's endeavor will provide services and enhance the health and wellbeing of Americans he will serve, and that in terms of entrepreneurship, health, and science, his endeavor will be in the national interest. While we acknowledge the importance of entrepreneurship to the economy, the scope of the Petitioner's work is limited to his patients, and the opinion letter does not sufficiently explain how the Petitioner's service to his patients will be of national importance or go beyond benefiting those that have access to his clinical practice. The opinion also notes that the Petitioner's use of new, less invasive technologies will enhance the field's scientific advancements in dentistry, and that his use of mobile units would improve accessibility. Again, while we acknowledge that greater access to dental care is a laudable goal, as are improved dental techniques, the letter does not contain the level of specificity needed to determine how these goals will be of national importance beyond being a service to his individual patients. Moreover, it is unclear what new and less invasive techniques the writer is referring to and whether the Petitioner, in fact, created these techniques, and how they differ from the current standard of care employed by dentists. *See 1756. Inc. v. US. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (an agency need not credit conclusory assertions in immigration benefits adjudications);

*see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (expert opinion testimony does not necessarily purport to be evidence as to “fact”). Similarly, the writer notes that the Petitioner will use advanced technology, however this assertion does not contain evidentiary support. *Id.*

In addition to the opinion letter, the Petitioner includes reference letters, which explain that he is a hardworking, motivated, and detail oriented individual. These letters demonstrate that the Petitioner is held in high regard by the writers, and were his endeavor to meet *Dhanasar’s* prong one standard of national importance, we may consider these letters as support for *Dhanasar’s* prong two analysis, which focuses on whether he is well-positioned to advance the endeavor. Overall, the reference letters do not sufficiently address the proposed endeavor or explain why it is of national importance.

The Petitioner provides news articles, and two business plans with citations to source articles that discuss the importance of dental care, the problem of unequal access to dental care, how access to dental care is affected by its high expense of it, and the contributions and vital role immigrants and immigrant entrepreneurs play in addressing these issues in the United States. While we acknowledge dental care and affordable access to it are important, and that immigrants and entrepreneurialism are also important, the articles do not discuss the Petitioner's specific proposed endeavor or how his endeavor will be of national importance or address these issues. Moreover, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work, but “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec at 889.

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. Here, we similarly conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his patients to impact the industry more broadly at a level commensurate with national importance. Nor has he documented that the particular work he proposes to undertake offers original innovations that contribute to advancements in dentistry or otherwise has broader implications for his field. Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. For all these reasons, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the record does not sufficiently establish the national importance of his proposed endeavor as required by the first prong of *Dhanasar’s* analytical framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding his eligibility under the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. at 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

### III. CONCLUSION

As the record does not establish that the Petitioner has met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner is not eligible for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.