



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

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

In Re: 26991367

Date: JULY 19, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the mental health industry, seeks employment-based second preference (EB-2) 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 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 record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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.

“Advanced degree” means any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. *Id.*

“Profession” means one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32),¹ as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

¹ 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², 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

At the time of filing her petition, the Petitioner proposed to work in the United States as an independent business owner in the fields of programming, psychology, and health care.³ In response to a request for evidence (RFE), the Petitioner proposed to work in the United States as the president and lead psychologist of her company, [REDACTED] which will provide mental health services, alleviating issues resulting from mental health disorders and providing relief to individuals in the United States.⁴

The Petitioner holds a diploma in accounting and audit from [REDACTED] State University and a diploma in multipurpose use and conservation of water resources from [REDACTED] University. The Petitioner submitted an evaluation report of her academic records from [REDACTED] the director of [REDACTED]. The education evaluation report states that the diplomas are the academic equivalents of a bachelor’s degree and a master’s degree in civil engineering and in economics and accounting from a regionally accredited institution in the United States. The Petitioner also submitted a letter from [REDACTED] the director and chief accountant of [REDACTED] [REDACTED] which states that the Petitioner worked for the company as the chief accountant from August 2014 to August 2020. The Director determined that she is eligible for the EB-2 classification as a member of the professions holding an advanced degree, and we agree.

The remaining issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of that classification’s job offer requirement. We conclude that she is not. While we may not address each piece of evidence individually, we have reviewed and considered each one.

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889.

² 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).

³ See Exhibit B-1: A statement of the Petitioner in support of her petition, undated.

⁴ See Exhibit 3: Business Plan of [REDACTED], at 3, dated 2022.

The Director determined that the Petitioner's proposed endeavor to provide mental health services has substantial merit, and we agree. Regarding national importance of the proposed endeavor, the Director determined that the Petitioner has not submitted a detailed description of the proposed endeavor and documentary evidence demonstrating that the proposed endeavor will have potential prospective impact.

On appeal, the Petitioner states that she plans to work in the United States as an entrepreneur in the mental health industry through her company, [REDACTED] which offers accessible online psychology consultations to provide quality mental health treatment to patients who are suffering from mental health problems. The Petitioner also states that she will launch a program for psychology interns and will use clinical research to advance psychological understanding in the United States. We find that the Petitioner has provided a detailed description of her proposed endeavor.

The Petitioner contends that her proposed endeavor has national importance because of the growing demand for mental health solutions. The Petitioner asserts that one out of every five people in the United States had a mental illness in 2019; that at the height of the pandemic, 40% of adults reports symptoms of anxiety or depression; that the United States does not have enough mental health professionals to treat everyone who is suffering; and that within a few years, the United States will be short between 14,280 and 31,109 psychiatrists.

The U.S. Department of Labor addresses worker shortages through the labor certification process, and, therefore, a shortage of qualified professionals alone is not sufficient to demonstrate eligibility for the national interest waiver. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 218 (Act. Assoc. Comm'r 1998).

The Petitioner also contends that her proposed endeavor has a national impact on the mental health field because mental health is crucial to our well-being, because mental health affects our everyday life from childhood and adolescence through adulthood, and because mental illness are the most common health conditions in the United States as mental illness is experienced by one out of five Americans.

In support of her permanent residence in the United States and request for a national interest waiver, the Petitioner submitted an advisory opinion letter from [REDACTED] a professor of psychology at [REDACTED] University. [REDACTED] asserts that the Petitioner's proposed endeavor has significant national and global impact, is a matter related to national initiatives, has substantial positive economic effects, and present solutions for individual and societal wellbeing.

Regarding the advisory opinion letter from [REDACTED] USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). Nevertheless, USCIS is responsible for making the final determination regarding a petitioner's eligibility for the benefit sought. *See id.*

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 "the specific endeavor that the

foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. In addition, we indicated 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.

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 incorporated her company, [REDACTED], in September 2022 and asserts that her company will assist people with psychological problems by offering online consultations and providing coaching sessions, sessions for midlife crises, career-related counseling, sessions for concerns involving parents and children, and individual and family consultations.⁵ The Petitioner claims that through her company, she will positively influence U.S. mental health by offering therapy and teletherapy in the designated health professional shortage areas, which are areas where the ratio of mental health professionals to residents is smaller than 1 per 30,000 people.⁶ The Petitioner also claims that she will contribute to the expansion of psychological knowledge in the United States through clinical research.⁷ The Petitioner further claims that her efforts will increase the qualifications and number of the U.S. mental health professionals, will benefit U.S. individuals, and will generate positive impacts on the U.S. economy by creating jobs and collecting taxes.⁸

While we acknowledge the Petitioner’s claims, she has not provided sufficient evidence to substantiate them. For example, she has not provided sufficient documentary evidence that her proposed endeavor as the president and lead psychologist of her company would impact the mental health industry more broadly rather than benefiting her own company and its clients. Also, the Petitioner has not sufficiently explained how her company, which provides mental health services to individuals, will increase the qualifications and number of mental health professionals in the United States. In addition, the Petitioner has not provided further details regarding the claimed clinical research, such as research areas, research objects, any funding for research, how research will be conducted, or objectives of research, which would enable us to determine whether the research will contribute to the expansion of psychological knowledge in the United States. Moreover, the business plan does not provide the location of the company, service areas, target market, prospective clients, or other sufficient evidence to establish that her company will provide mental health services in the designated health professional shortage areas. Without sufficient documentary evidence of their broader impact, the Petitioner’s proposed employment does not meet the national importance element of the first prong of the *Dhanasar* framework.

As for the economic value and job creation that the Petitioner asserts her company will offer, the business plan includes projections of \$435,000 in total sales and hiring of six psychologists in the first year of operation and \$1,234,000 in total sales and hiring of 13 additional employees, including psychologists, an accountant, a personnel officer, an operations manager, and a creative director in the

⁵ See *id.* at 5.

⁶ See *id.* at 4.

⁷ See *id.*

⁸ See *id.* at 5.

fifth year of operation.⁹ However, the business plan does not provide sufficient details of the basis for these projections or adequately explain how these sales and staffing targets will be realized. Moreover, even if all the projections in the business plan were realized, the record lacks sufficient evidence demonstrating that the Petitioner's business will have an impact on the mental health industry or the U.S. economy at a level commensurate with national importance. Furthermore, the Petitioner has not offered sufficient evidence that her company will employ a significant population of workers in an economically depressed area or that her endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner demonstrated that any increase in her company's revenue stands to substantially affect economic activity regionally or nationally. The Petitioner has not otherwise provided sufficient information and evidence to demonstrate the prospective impact of her proposed endeavor rises to the level of national importance. Accordingly, the record does not sufficiently demonstrate the Petitioner's proposed endeavor is of national importance.

On appeal, the Petitioner submits printouts from her company website and certificates of training in use of art tools in gestalt therapy, introduction to gestalt therapy, and gestalt counseling from [redacted] Institute [redacted]. The company website and training certificates show the Petitioner's commitment and qualifications to drive the endeavor forward, which may support that the Petitioner is well positioned to advance the proposed endeavor under the second prong of the *Dhanasar* framework. However, these documents do not support that the Petitioner's proposed endeavor is of national importance.

Because the documentation in the record does not establish by a preponderance of the evidence the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated by a preponderance of the evidence 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. We will reserve these issues for future consideration should the need arise.¹⁰

III. CONCLUSION

Although the Petitioner has shown that she is a member of the professions holding an advanced degree and that her proposed endeavor to work in the United States as an entrepreneur in the mental health industry has substantial merit, she has not shown by a preponderance of the evidence that her proposed endeavor has national importance. Accordingly, the Petitioner has not established by a preponderance of the evidence that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

⁹ See *id.* at 32-34.

¹⁰ See *INS v. Bagamasbad*, 429 U.S. 24, 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. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).