



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

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

In Re: 26953723

Date: JUN. 06, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physician, 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 Texas Service Center denied the petition, concluding that although she was eligible as a member of the professions holding an advanced degree, the record did not establish her eligibility or that she otherwise merited 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. [If a doctoral degree is customarily required for the specialty, the non-citizen must a United States doctorate or a foreign equivalent degree. (delete if doctorate not an issue)] 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 discretion<sup>1</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 Director determined that the Petitioner is eligible for the underlying EB-2 classification as a member of the professions holding an advanced degree. As the record includes a copy of her Title of Physician degree from the [REDACTED] (Brazil) and an educational evaluation stating that this is equivalent to a Doctor of Medicine degree from an accredited institution in the U.S., we agree.

### A. The Proposed Endeavor

The Petitioner is a physician who has experience as a general practitioner and a geriatrician. She initially indicated she would “continue using [her] expertise as a general practitioner and geriatrician to further advance the Americans’ health and improve Americans’ elderly lifetime,” and further specified that her “focus will be to work as a geriatric doctor.” She also supported her proposed endeavor by submitting a letter from the Director of the [REDACTED] Medical Services [REDACTED] clinic, stating that they “would like to engage in a professional relationship” with her as a geriatrician.

In responding to the Director’s request for evidence (RFE), she made the same statements, but also indicated that she would develop the business of a medical clinic that she would own and manage. She further added that her proposed endeavor would include “establishing connections with medically underserved communities and areas where the healthcare is not available.” This was supported by a business plan for her proposed clinic, as well as a new letter from [REDACTED] which stated that in addition to her duties as a geriatrician, it planned for her to “give lectures around the country by creating teaching materials, preparing for tutorials/seminars and marking students’ work, as well as direct teaching in underserved communities.”

In his decision, the Director determined that the Petitioner’s new information about her proposed medical clinic and her role as owner and manager of that business constituted an impermissible material change and created doubts about the nature of her endeavor. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998). On appeal, the Petitioner asserts that this new information and documentation was not a material change to her proposed endeavor, but additional details and clarification about her proposed endeavor. She argues that her intention was and remains to work as a physician, whether for an employer or at her own clinic.

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<sup>1</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).

The Petitioner's initial description of her proposed endeavor did not include plans to form and manage her own company, but only to be employed as a geriatric physician. This was supported by the letter from [redacted] which expressed interest in employing her in such a role. We conclude that to the extent that her RFE response added the elements of entrepreneurialism and business management to her proposed endeavor, this was a change which was material to her petition for a national interest waiver, and was therefore not permitted. Accordingly, we will only consider her proposal to practice as a general practitioner and geriatrician when conducting our analysis under the *Dhanasar* framework.

## B. Substantial Merit and National Importance

The first prong, 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.

The Director referenced his initial determination (from the RFE) that the Petitioner's proposed endeavor was of substantial merit, but concluded that because of her material change to the proposed endeavor, that determination was moot. Based upon the Petitioner's description of her endeavor and the evidence showing the importance of geriatric care in the United States, we conclude that her proposed work as a general practitioner and geriatrician is of substantial merit.

Regarding the national importance of the proposed endeavor, the Director again referenced the material change made in the Petitioner's RFE response and concluded that this made the nature and national importance of the proposed endeavor "doubtful." On appeal, in addition to disputing that the new evidence and information amounted to a material change, the Petitioner notes the evidence she submitted regarding the growing need for elderly care in the United States. These materials included a White House fact sheet describing reforms to nursing home administration, and media reports about the practice of geriatrics and the aging population in particular states. She also refers to an expert opinion letter she submitted in support of her petition, which also cites the aging population in the United States and the lack of geriatricians sufficient to meet this demand as factors which support the national importance of the Petitioner's proposed endeavor.

As stated by the Director, when conducting an analysis under the first prong of the *Dhanasar* framework, we focus on the specific endeavor that a petitioner proposes to undertake. *Id.* The evidence noted above describes the importance of the field of geriatrics, but does not show the national importance of the Petitioner's proposed work as a geriatrician. As with the petitioner's proposed teaching activities in *Dhanasar*, the record here does not indicate that the Petitioner's practice of geriatrics, whether in her clinic, at [redacted] or somewhere else in the United States, would impact the field of geriatrics more broadly. In addition, the two sentences in the second [redacted] letter devoted to its plan for the Petitioner to "give lectures around the country" lack sufficient detail and supporting evidence to be considered here, and more importantly she makes no mention of lecturing or teaching as a part of her proposed endeavor in either of her statements. Similarly, the Petitioner's vague statements that she will "establish[ing] connections with medically underserved communities" are insufficiently specific to demonstrate the potential prospective impact of such activity.

For the reasons given above, we conclude that the Petitioner has not established the national importance of her proposed endeavor, and therefore does not meet the first prong of the *Dhanasar* analytical framework.

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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. *Id.* at 890.

The Director's decision concerning the second prong focused mainly on the Petitioner's lack of experience as an entrepreneur to show that she is well positioned to advance her proposed clinic, but also noted that the evidence regarding her training and experience as a physician was insufficient to establish the same regarding her proposal to work as a geriatrician. On appeal, the Petitioner again asserts that the evidence of her education, training, and 12 years of experience as a physician meet the requirements of the second prong of the *Dhanasar* analysis.

We acknowledge the Petitioner's diploma, training certificates, and letters from colleagues which show her education, skills, and knowledge as a physician, and the letters from [redacted] and documentation regarding her qualification to work as a physician in the United States which demonstrate a plan for future activities. However, this evidence shows that she has only just begun the process for achieving licensure as a physician in the United States, and thus was not eligible to participate in, let alone advance, her proposed endeavor at the time she filed her petition. *See* 8 C.F.R. § 103.2(b)(1). As such, we conclude that the Petitioner has not established that she is well positioned to advance her proposed endeavor.

#### C. Whether on Balance a Waiver is Beneficial

The third prong requires a 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. However, as a petitioner must meet all three prongs of the framework to be eligible for a national interest waiver, we reserve our evaluation of the third prong of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

### III. CONCLUSION

The evidence establishes the Petitioner's eligibility for the EB-2 immigrant classification as a member of the professions holding an advanced degree. However, the record does not show that her proposed endeavor to practice as a physician in the areas of general practice and geriatrics is of national importance, or that she is well positioned to advance that endeavor. Further, the Petitioner's addition of entrepreneurial and business management elements to her proposed endeavor was an impermissible

material change to her petition, and as such could not be considered. She has therefore not established that she is eligible for, or otherwise merits, a national interest waiver.

**ORDER:** The appeal is dismissed.