



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

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

In Re: 27032706

Date: JUN. 9, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a dentist, seeks classification under the second-preference, immigrant visa category as a member of the professions holding an advanced degree and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse the job-offer requirement - and the related need for certification from the U.S. Department of Labor (DOL) - if a petitioner demonstrates that a waiver is in the "national interest." Section 203(b)(2)(B)(i) of the Act.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not sufficiently demonstrate national interest in a waiver's grant. On appeal, the Petitioner contends that the Director "made numerous, erroneous conclusions of both law and fact."

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the Petitioner demonstrated the "substantial merit" and "national importance" of his proposed U.S. employment. But, because the record does not establish that he was "well positioned" to advance the endeavor at the times of the petition's filing and adjudication, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must demonstrate their qualifications for the underlying immigrant visa category, either as an advanced degree professional or a noncitizen of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. The category generally requires a prospective U.S. employer to seek a noncitizen's services and obtain DOL certification to permanently employ them in the country. Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, a petitioner must demonstrate that waiving these U.S. worker protections is in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term “national interest.” But we have established a framework for adjudicating requests for national interest waivers. *See Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). If otherwise qualified as an advanced degree professional or noncitizen of exceptional ability, a petitioner may merit a waiver of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has “substantial merit” and “national importance;”
- They are “well positioned” to advance their intended endeavor; and
- On balance, a waiver of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

The Petitioner, a native and citizen of Brazil, has a dental surgery degree and post-graduate diplomas in the sub-fields of prosthodontics and implant dentistry. He has more than 20 years of experience as a dentist. From 2012 to 2017, he owned a clinic in Brazil where he specialized in treating complex cases.

In 2017, the Petitioner came to the United States to attend a three-year, post-doctoral program in prosthodontics, a specialized branch of dentistry dedicated to making artificial substitutes for damaged or missing teeth. While the petition was pending in 2021, the Petitioner obtained a Texas license to practice dentistry. He proposes to buy an established dental practice in that state and expand its operations.

A. The Requested Immigrant Visa Category

The Petitioner asserts his qualifications for the requested immigrant visa category as an advanced degree professional. But the Director did not address the issue. Because we will affirm the petition’s denial on another ground, we need not consider the Petitioner’s qualifications as an advanced degree professional. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“[A]gencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.”)

B. Substantial Merit

The record supports the Director’s finding that the Petitioner’s proposed U.S. employment has substantial merit. Evidence indicates that his endeavor could have a positive economic impact and provide advances in dentistry.

C. National Importance

When determining whether a proposed endeavor has national importance, USCIS does not focus on the significance of a petitioner’s field, industry, or profession. Rather, the Agency examines “the specific endeavor that the foreign national proposes to undertake” and its “potential prospective impact.” *Matter of Dhanasar*, 26 I&N Dec. at 889. “An undertaking may have national importance,

for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *Id.*

USCIS also does not focus on the geographical scope of proposed U.S. employment. “An 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.

The Director found that the Petitioner did not sufficiently explain how the United States would benefit from his proposed work. He contended that his work would create jobs and improve dentistry and healthcare in the United States. But the Director found that the Petitioner did not provide enough evidence and information about his specific, proposed endeavor to demonstrate how it would achieve those results.

To the extent the Petitioner seeks to merely buy an established U.S. dental clinic and expand its operations, we agree with the Director. We acknowledge that dentistry is an important field/profession affecting public health. But the record does not establish that the Petitioner’s specific plan to buy and expand the Texas dental clinic rises to the level of national importance. He projects that his clinic would start with six employees and generate \$738,144 in revenues in its first year of operations, with those figures rising by the end of its fifth operational year to 14 employees and \$1,171,469 in revenues. He does not assert that the business would benefit an economically depressed area or provide other special economic benefits. Thus, based on the Petitioner’s projections, the record does not demonstrate that the endeavor would generate enough positive economic effects to merit national importance.

But the Director disregarded evidence of the Petitioner’s approach to prosthodontics. In his business plan, the Petitioner detailed a technique he has developed over the past 10 years or so. Because research shows that successful treatments of complex oral disorders hinge on continuous collaboration with patients, he stated that he applied behavioral sciences to his prosthodontic technique. For example, before beginning dental work, he psychologically prepares patients for all treatment phases and manages the patients’ expectations. He also examines tissues and organs in oral and craniofacial cavities to identify potential sources of pain or dysfunction.

The Petitioner described his technique in an article that a U.S. institute of advanced dental education published in 2019. In a letter, the institute’s executive director stated that it sent the publication to about 600 prominent U.S. dentists. She described their response to it as “monumental.”

The resonance of the article was impressive, and leaders in the field reached out, wanting to know more about [the Petitioner]. [He] is a thought leader, someone who, based on his expertise and perspective in our industry, offers unique guidance, inspires innovation, and influences others.

In another letter, a California dentist stated that he received a copy of the Petitioner’s article from a colleague. “I quickly realized how timely [the article’s] subject was to the profession,” the dentist said. He stated that, because the recent COVID-19 pandemic caused many people stress, “[w]e are undergoing a wave of patients with failing dentitions right now due to excessive grinding of the teeth

or clenching of the jaws.” *See also* Kim Tingley, *The New York Times Magazine*, “The Pandemic Was Bad for Our Teeth. Will It Change Oral Health Forever?” (May 19, 2021), www.nytimes.com/2021/05/19/magazine/the-pandemic-was-bad-for-our-teeth-will-it-change-oral-health-forever.html. The dentist said that, after adopting the Petitioner’s technique, he has averaged a 30% reduction in treatment times and a 14% reduction in treatment costs, allowing him to treat more patients. He said: “We need specialists like [the Petitioner] that have transcended regional influence and have become a reference in the national dental community. It is critical that the technique [the Petitioner] details in his article is made available everywhere.”

A few months after publication of the Petitioner’s article, he presented his prosthodontics technique at an annual U.S. dental conference. The conference attendees voted to award him the meeting’s first-place prize. The institute’s executive director, who attended the conference, also said that a later online meeting of dental representatives from 18 U.S. and Canadian universities featured the Petitioner’s technique. She said that “[the Petitioner’s] approach has been ratified by the U.S. dental community.”

The Petitioner stated that he would continue using his prosthodontics technique in his U.S. dental practice and support its use throughout the country. The record therefore demonstrates that his proposed U.S. employment has national implications. His technique represents a potential dental advance that could help people across the country. *See Matter of Dhanasar*, 26 I&N Dec. at 889 (stating that undertakings with national implications within a particular field - like “medical advances” - may have national importance). We therefore conclude that, contrary to the Director’s finding, the Petitioner has demonstrated the national importance of his endeavor.

D. Well Positioned to Advance the Proposed Endeavor

To determine whether a petitioner is well positioned to advance their proposed endeavor, USCIS considers a variety of factors, including: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890. Thus, USCIS shifts its focus from a proposed endeavor to a petitioner. *Id.*

A petitioner need not demonstrate that their endeavor would ultimately succeed. *Id.* But they must establish that they are “well positioned to advance the proposed endeavor.” *Id.* A petitioner must also demonstrate their qualifications “at the time of filing the requested benefit and . . . through adjudication.” 8 C.F.R. § 103.2(b)(1).

The Director recognized that the Petitioner’s education and experience qualify him to practice dentistry in the United States. But the Director found that he did not submit documentary evidence sufficient to support his claim of being well positioned to advance his endeavor.

The record supports the Director’s decision. The Petitioner has not detailed how he plans to support and spread use of his prosthodontic technique in the United States. We recognize that he started that process by writing the article about his technique and presenting his method at the dental conference. But the Petitioner does not indicate any future plans to disseminate his technique in the United States.

The lack of details and evidence suggests that he would not promote the use of his prosthodontics method throughout the United States.

Also, the record shows that the Petitioner did not obtain a state license to practice dentistry in the United States until March 2021, more than six months after the petition's filing in August 2020. Thus, contrary to 8 C.F.R. § 103.2(b), he did not demonstrate that he was well positioned to advance his proposed endeavor "at the time of filing the benefit request and . . . through adjudication."

For the foregoing reasons, the Petitioner has not demonstrated that he is well positioned to advance his proposed U.S. endeavor. We will therefore affirm the petition's denial.

Our affirmance resolves the appeal. As the Petitioner has not demonstrated sufficient positioning to advance his proposed U.S. endeavor, we need not consider his qualifications for the requested immigrant visa category or whether a waiver would benefit the country. Rather, we will reserve consideration of these remaining issues and, if necessary, resolve them at a later time. *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

The Petitioner has established that his proposed U.S. endeavor has substantial merit and national importance. But the record does not demonstrate that he was well positioned to advance the proposal at the time of the petition's filing and during its adjudication.

ORDER: The appeal is dismissed.