



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

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

In Re: 25676250

Date: MAR. 6, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a dentist, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not resolve the discrepancy in the record as to her proposed endeavor and, without a sufficiently defined endeavor, the Petitioner did not meet any of the three prongs required to establish eligibility under the *Dhanasar* analytical framework. 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.

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.

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 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 a matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

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).

- 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.

The Director did not make a finding in the decision as to the threshold question of the Petitioner's eligibility for the underlying EB-2 visa classification, however the Director stated in a request for evidence (RFE) that the Petitioner qualifies for the visa classification as an advanced degree professional. The issue on appeal is whether the Petitioner has established that a waiver of the job offer requirement, and thus of a labor certification, is in the national interest.

In her initial filing, the Petitioner described her proposed endeavor as "working as a Medical Scientist in the Dental field." She defined a medical scientist as someone who "conduct[s] research dealing with understanding human diseases and improving overall human health" and who "engage[s] in clinical investigation, research and developments. . . ." The Petitioner did not sufficiently describe the prospective research in the dental field that she intends to conduct, and she did not include evidence of prior or ongoing original research. The initial filing also included a tentative agreement between the Petitioner and a licensed dentist in the United States to establish a dental practice together.

The Director issued an RFE noting the discrepancy between the endeavor of working as a medical scientist and that of operating a dental clinic and requesting additional evidence regarding the proposed endeavor. In response, the Petitioner submitted a business plan for the establishment of a dental clinic in the United States. The brief in support of the RFE response characterizes the Petitioner as an entrepreneur seeking to open a dental clinic. The Petitioner did not address how operating a dental clinic relates to her stated endeavor of working as a medical scientist.

The Director issued a second RFE, again requesting the Petitioner clarify the conflicting information in the record regarding the proposed endeavor. In response, the Petitioner submitted a statement in support of her "petition as a Medical Scientist in Dentistry in the Dental Field" in which she claims that she intends to establish a dental health firm in the United States. The brief in support of the second RFE response characterizes the Petitioner as a "Medical Scientist in Dentistry" but states that she is seeking to establish a dental clinic. Again, the Petitioner did not explain how working as a medical scientist as she defines it relates to her stated intention of operating a dental clinic.

Although the basis for the denial was this inconsistency in the proposed endeavor, the Petitioner does not provide clarification of her proposed endeavor on appeal. Instead, the Petitioner claims the Director improperly imposed novel and substantive evidentiary requirements that are not in the regulations. However, she does not identify what these improper requirements are. The Petitioner also makes general assertions that the Director did not apply the proper standard of proof or give due regard to the evidence in the record. However, she does not support these assertions with specificity as to the record.

As discussed by the Director, the Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to whether the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, the Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). The purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of

the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1), (b)(8), (b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform with USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm’r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the original evidence in the record. *See id.* at 176.

The information provided by the Petitioner in the response to the Director’s two RFEs did not clarify or provide more specificity as to the proposed endeavor of working as a medical scientist. Rather, the Petitioner continues to describe her proposed endeavor as working as a medical scientist while primarily providing evidence of her intention to open a dental practice, without reconciling this conflicting information.

A petitioner must identify “the specific endeavor that [she] proposes to undertake.” *See Matter of Dhanasar*, 26 I&N Dec. at 889. On the one hand, if the Petitioner’s proposed endeavor is to work as a medical scientist, she has not provided sufficient details regarding this endeavor, such as identifying the specific research in which she intends to engage. Without sufficient detail, we cannot accurately analyze the proposed endeavor to determine if it has substantial merit or national importance under the first prong. Nor has she sufficiently explained how the evidence of her planned dental practice relates to this endeavor. On the other hand, if the Petitioner seeks to change her proposed endeavor from working as a medical scientist to operating a dental clinic, this presents a material change to the basis for her request for a national interest waiver. *See Matter of Izummi*, 22 I&N Dec. at 175. A petition may not be approved in that instance. *Id.* The Petitioner has not resolved the discrepancies in the record regarding her proposed endeavor. *Matter of Ho*, 19 I&N Dec. at 591-92.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the noncitizen is well-positioned to advance it under the *Dhanasar* framework. *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner was afforded two opportunities before the Director’s decision to clarify her endeavor, but she did not do so. The Petitioner additionally did not clarify her proposed endeavor on appeal. Because the Petitioner has not provided consistent information regarding her proposed endeavor, we cannot sufficiently determine what the proposed endeavor actually is, or accurately analyze the endeavor. Therefore, we conclude that she meets neither the first nor second prong, and that she has not established, on balance, waiving the job offer requirement would benefit the United States. *Id.*

Because the Petitioner has not sufficiently identified her proposed endeavor, further analysis of her eligibility under any of the prongs outlined in *Dhanasar* would serve no meaningful purpose, and we conclude she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.