



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 25785407

Date: MAR. 09, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a surgical technologist specialist, 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 the Petitioner's eligibility for a national interest waiver under the Dhanasar 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.

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.

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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

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 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 the Petitioner qualifies for the underlying EB-2 classification. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the Dhanasar framework. While we do not discuss each piece of evidence individually, we have reviewed and considered each one. The appeal contains a brief from an attorney in a law firm; however, the Petitioner did not offer documentation to demonstrate that this firm represents her in these appellate proceedings. When we mention the Petitioner's statements or arguments in our analysis below, we are often referring to statements the attorney prepared.

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 Petitioner described her proposed endeavor as continuing her career in the medical and healthcare field as a nurse. Specifically, she proposes to "focus on providing much needed services to doctors and physicians, before, during, and after surgery. . . provide direct benefits in helping support physicians and doctors, improving patients' quality of life, as well as devoting time to educate and prepare more professionals to work in her field of expertise" The Petitioner emphasized that she would work in any clinic, hospital, nursing home, or other healthcare institute in need of her services.

The Director notified the Petitioner through a request for evidence (RFE) that although "it is not necessary for you to have a job offer from a specific employer. . . , we will consider information about your current and prospective positions to illustrate the capacity in which you intend to work in order to determine whether your proposed endeavor meets the requirements of the first prong" The RFE stated that the Petitioner had not submitted evidence sufficient to establish how the proposed endeavor will broadly affect the field of nursing as a whole.

In her RFE response, the Petitioner stated that she already provided a résumé listing her past employment positions and outlining the duties and responsibilities within each position. She also stated that she provided recommendation letters from past employers which demonstrate her work in the field. Accordingly, the Petitioner concluded that the documentation submitted with her initial filing, "clearly illustrates the capacity in which she intends to work in, thus allowing USCIS to determine [the] endeavor's national importance."

The Petitioner explained that her endeavor is nationally important because of the importance of nursing to the healthcare system and society, the severe shortage of nurses in the United States, and the increased demand for nurses due to the COVID-19 pandemic. In support, she provided a personal statement, numerous recommendation letters, industry articles and reports, as well as an advisory opinion from [redacted], a professor at the [redacted] Institute.

The authors of the recommendation letters explained her duties in past employment positions, praised the Petitioner's positive personal qualities and work performance, and highlighted her value and good reputation as a nurse. The Petitioner's expertise acquired through her education and employment relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor has substantial merit and national importance under *Dhanasar*'s first prong. While the authors express their high opinion of the Petitioner and recommend her for future nursing positions in the United States, they do not discuss her specific proposed endeavor or explain why it has national importance. Therefore, the letters are not probative of the Petitioner's eligibility under the first *Dhanasar* prong.

The Petitioner provided numerous industry reports and articles, including those about nursing occupations, the nursing shortage, record-breaking hospitalizations due to COVID-19, and statistics on the nursing industry. On appeal, the Petitioner provides additional articles concerning topics such as how foreign nurses can be hired to relieve national shortages, the importance of nursing for wellness, and the reasons for the nursing shortage and potential solutions to it. While these reports and articles demonstrate the importance of the nursing field, they do not necessarily support a finding that the Petitioner's specific proposed endeavor has national importance. 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." *Id.* at 889. Here, the articles and reports do not mention the Petitioner's specific proposed endeavor or demonstrate how its impact would rise to the level of national importance.

In his advisory opinion, [REDACTED] discussed healthcare industry statistics, the surgical technologist occupation, the Brazilian healthcare system, and how healthcare is a priority for the United States. Further, he stated that due to the national shortage of healthcare workers, a situation which the COVID-19 pandemic has exacerbated, the Petitioner's proposed endeavor is nationally important. We acknowledge both [REDACTED] and the Petitioner's claims that the COVID-19 pandemic and a pre-existing nursing shortage places the Petitioner's nursing work in high demand. We further acknowledge the Petitioner's arguments that nursing is important for the nation's quality of life, productivity, societal wellbeing, and the U.S. economy. Nevertheless, this reasoning focuses on the field of nursing and healthcare as a whole, not on the Petitioner's specific proposed endeavor. The Petitioner has not submitted sufficient evidence to demonstrate how her proposed endeavor's impact would extend beyond her employer and patients to the field of nursing or the nation as a whole. Although the Petitioner points out the healthcare industry's importance to the economy, she has not identified how her specific endeavor contributes to the economy. As such, she has not shown that the benefits to the regional or national economy resulting from her endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner presents a letter from an eye services medical group stating that the Petitioner works as a part-time volunteer in their medical practice; however, she has not explained how this volunteer opportunity fits within her proposed endeavor. The Petitioner's endeavor may differ depending on whether she works in a clinic, hospital, nursing home, or other healthcare institute. It is not apparent, for instance, if she will assist surgeons in the operating room, attend to residents in a nursing home, serve as a first responder, or work as a nurse in some other capacity. Further, the record does not demonstrate, for example, if she will treat patients in a clinical care setting and if so, how many patients she would treat. The Petitioner has not suggested that her work will resolve the national

nursing shortage, nor has she explained what specific impact her work would have on reducing such a shortage.

We conclude that while the Petitioner's endeavor may positively impact the specific patients and workplaces she serves, she has not persuasively established how her endeavor will have a broader impact. Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated 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.

III. CONCLUSION

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the Dhanasar framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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 alternative issues on appeal where an applicant is otherwise ineligible).

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.