



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

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

In Re: 28962835

Date: NOV. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physician and entrepreneur, seeks classification as a member of the professions holding an advanced degree. 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 attached to this EB-2 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 qualifies for the EB-2 classification as an advanced degree professional but that the record did not establish that a waiver of the job offer requirement is in the national interest. 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, the petitioner must then establish eligibility for 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,<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 found that the Petitioner qualifies for the EB-2 classification as an advanced degree professional based upon her title of physician degree from Venezuela. The Director also concluded that the Petitioner established the substantial merit of the proposed endeavor. The issues on appeal are whether the Petitioner has established the proposed endeavor's national importance, whether she is well-positioned to advance the proposed endeavor, and whether, on balance, a waiver of the job offer requirement would benefit the United States.

As to the proposed endeavor, the Petitioner states that she will work to promote breastfeeding. The Petitioner states that as part of this endeavor she will educate, train, and support mothers in breastfeeding; she will engage in the research, publication, and presentation of information regarding breastfeeding; and that she will establish a non-profit organization that will promote breastfeeding.

In concluding that the Petitioner did not establish the national importance of the proposed endeavor, the Director acknowledged that the Petitioner's intent is to broadly impact the field by "foster[ing] the increased adoption of breastfeeding and healthy eating habits to improve childhood nutrition," but concluded that the evidence did not establish that the proposed endeavor stands to have an impact beyond the proposed organization itself. The Director discussed the Petitioner's personal statement, the reports and articles submitted, and the letters of recommendation submitted, and concluded that these documents primarily describe the importance of breastfeeding in general and the problem of physician shortages in the United States, rather than establishing the importance of the Petitioner's specific endeavor. The Director also discussed the business plan and concluded that, while the organization may improve the welfare of its potential clients, the evidence did not demonstrate that the organization would enhance societal welfare on a level commensurate with national importance. The Director also noted that the business plan does not provide specific estimates for potential job creation or other financial projections. The Director concluded that the plan therefore did not establish the level of substantial positive economic effects contemplated by *Matter of Dhanasar*. The Director similarly concluded that the Petitioner did not establish that she is well-positioned to advance the proposed endeavor nor that, on balance, waiving the job offer requirement would benefit the United States.<sup>2</sup>

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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).

<sup>2</sup> The Director did conclude that the Petitioner is well-positioned to educate mothers on breastfeeding, one aspect of the proposed endeavor. However, the Director concluded that the Petitioner is not well-positioned to operate the proposed nonprofit organization or to conduct, publish, and present research. Because we agree with the Director's conclusions as to the national importance element of the first *Dhanasar* prong, and because, as we discuss below, this is dispositive of the Petitioner's appeal, we need not further summarize the Director's decision as to the second and third prongs here.

On appeal, the Petitioner contends that the Director's analysis of the first prong is contrary to precedent case decisions and the USCIS Policy Manual. Specifically, the Petitioner claims that the Director did not consider the totality of the evidence in the record, did not sufficiently explain the reasons for the denial, and did not explain the record deficiencies in a manner that provided an opportunity for the Petitioner to rectify those deficiencies. The Petitioner claims that the Director failed to consider the "ample objective, documentary evidence" that demonstrates the national importance of the endeavor. The Petitioner specifically points to the articles submitted that discuss the benefits of breastfeeding, the shortage of physicians the United States, and the infant formula shortage and related initiatives from the U.S. government. Finally, the Petitioner claims that the endeavor does stand to have positive economic effects and that the Petitioner's personal statements contain "ample arguments supported by objective documentary evidence" which establish this claim.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Although the Petitioner claims that the Director did not sufficiently explain the basis for denial, upon de novo review we conclude that this claim is not supported by the record. Rather, the Director's decision cites to specific information in the record and includes findings that are well-supported by the language of *Matter of Dhanasar*. Similarly, as to the Petitioner's claim that the Director did not consider all of the evidence in the record, the Petitioner does not support this claim with sufficient specificity. The only specific example the Petitioner provides on appeal of evidence that the Director did not consider are the articles and evidence related to breastfeeding in general, physician shortages, and the infant formula shortage. But the articles and reports in the record were in fact discussed by the Director, with the Director concluding that they relate to the field in general and not to the Petitioner's specific, proposed endeavor. Additionally, we agree with the Director that in determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* at 889. Moreover, the Petitioner does not address this finding on appeal or explain how her specific endeavor would increase the practice of breastfeeding, reduce the physician shortage, or reduce the infant formula shortage at a level commensurate with national importance.

We do note that the Director did not specifically discuss the Petitioner's statement that she will conduct research as part of her proposed endeavor and whether this helps establish the endeavor's national importance. Evidence of engaging in original research may help demonstrate an endeavor's national importance, as the findings of that research may be disseminated through the field and may result in a broad impact. *See id.* at 891-92. However, the Petitioner does not claim on appeal that her proposed endeavor involves research and does not assert that the Director erred by not discussing this aspect of her proposed endeavor. We therefore consider the issue to be waived. *See, e.g., Matter of O-R-E-*,

28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).<sup>3</sup>

The Director's decision reviewed, discussed, and analyzed the Petitioner's documentation consistent with our precedent decision in *Matter of Dhanasar*. On appeal, rather than specifically identifying any errors in law or fact in the decision, the Petitioner merely makes broad, general assertions that the Director did not properly analyze the evidence and that she has established eligibility. These assertions, however, are not supported by the record, do not overcome the basis for the denial, and are insufficient to establish the Petitioner's eligibility for a national interest waiver.

Because the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); 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 the applicant is otherwise ineligible).

### III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude that the Petitioner 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.

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<sup>3</sup> Were we to consider on appeal the Petitioner's statement that she will engage in research as part of her endeavor, we would still conclude that this is not sufficient to establish the endeavor's national importance. Although the Petitioner states in her "Proposed Endeavor Statement" that her work will include research to identify why mothers stop breastfeeding, the record contains little more than this passing reference to research. The Petitioner submitted several documents in which she summarizes her endeavor, including an "Effort and Suggested Activities in the United States" statement, an initial personal statement, an updated personal statement, and a business plan for the nonprofit organization. The Petitioner does not elaborate on or further discuss conducting research as part of her proposed endeavor in these statements. The Petitioner does not explain what amount of her work would be devoted to research and the evidence in the record does not otherwise describe a research-based endeavor. Without further evidence as to the extent of research that the proposed endeavor would involve, or the specific research that the Petitioner intends to pursue, or its potential impact on the adoption and promotion of breastfeeding, the Petitioner has not established the national importance of her endeavor based upon this claim that she will engage in research.