



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

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

In Re: 28547098

Date: SEP. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a healthcare 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 that is attached to this EB-2 immigrant classification. 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 record did not establish that the Petitioner's endeavor would have national importance, that she is well-positioned to advance that endeavor, or that, on balance, it would benefit the United States to waive the job offer requirement.¹ 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest. Section 203(b)(2) of the Act.

Neither the statute nor the pertinent regulations define the term "national interest." *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that: (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the

¹ While not mentioned in the denial decision, the Director stated in their request for evidence (RFE) that the Petitioner qualifies as an advanced degree professional, which the evidence supports.

noncitizen is well-positioned to advance the proposed endeavor; and (3) that, on balance, it would benefit the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner, a registered nurse, seeks to open a healthcare consulting and education business in Florida. The Director concluded that the evidence provided did not meet any of the three prongs of the *Dhanasar* test and so did not show the Petitioner's eligibility for a national interest waiver. On appeal, the Petitioner submits a brief contending that the Director used overly strict evidentiary standards and "did not give due regard" to the provided evidence. Upon review, the Petitioner has not established that she merits a waiver of the job offer requirement in the exercise of discretion.

The first prong of the *Dhanasar* test, substantial merit and national importance, focuses on the specific endeavor that the Petitioner proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The national importance of an endeavor is determined by examining its potential impact. *Id.* An endeavor may qualify if, for instance, it has national implications within a particular field, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.* In this instance, the Director concluded that while the Petitioner's endeavor has substantial merit, she did not provide sufficient documentation to establish that it would have an impact rising to the level of national importance.

On appeal, the Petitioner states that the endeavor will be nationally important due to the "ripple effects" her activities will generate for the nationally important U.S. healthcare industry, such as job creation and the encouragement of foreign investment. Her appellate brief does not quantify any "ripple effects" that would be directly attributable to her endeavor or elaborate on how the endeavor will cause such effects, beyond simply operating as a business in the healthcare industry. While we acknowledge the healthcare industry's importance, the relevant question when determining whether a proposed endeavor would have national importance is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Id.* at 889-90. Here, the record does not establish that the endeavor's impact will be nationally important.

An endeavor may qualify under the first prong of *Dhanasar* if it has national implications in a particular field, such as those resulting from certain improved manufacturing processes or medical advances. *Id.* at 889. The Petitioner's business plan states that her company will provide nursing and health education services, both in-person and through telehealth. It does not document how these activities would constitute an advancement for the field of healthcare or nursing. While the plan states that the business will operate in medically underserved areas, it does not document or quantify how it will relieve the shortage of medical care in such areas to a nationally important extent. Nor does it name any specific area in Florida where it plans to operate, despite the Petitioner's claim in her "definitive statement" that she has "already identified some areas where the company can assist customers in healthcare education".² While we acknowledge the business plan's statement that telehealth services are available to customers in all locations, the fact that the company's services

² The business plan also mentions expansion plans that include "North and South Carolina as well as and other locations," but provides no further information.

could be used by people in medically underserved areas does not establish that they will be, or that this usage will be so great it will mitigate those regions' lack of medical services. Similarly, the plan states that the company will operate in Florida because that state has the highest level of chronic disease in the United States, but does not state to what extent it proposes to affect that statistic. Without relevant, probative, and credible documentation of the specific impact the endeavor proposes to have on its field, we cannot find that this impact will be nationally important. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Petitioner claims that her endeavor will be nationally important due to the importance of nursing as a profession. However, this establishes the merit of the endeavor, not its national impact, which is a separate consideration under the first *Dhanasar* prong. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. In *Dhanasar*, the noncitizen's work as a science teacher was found to have substantial merit but did not qualify him under the first prong because the evidence did not show how that work would impact the field of science education more broadly. *Id.* at 893. Similarly, as explained above, the Petitioner has not established that her endeavor will have an impact that extends beyond her customers and employees to the broader field of nursing or healthcare.

The Petitioner further states that her endeavor has national importance due to the shortage of nurses in the United States. However, it is not apparent how her endeavor would resolve this shortage or impact it on a national level. While the endeavor may create several new nursing jobs, the United States does not have a shortage of such positions, but of qualified workers to fill them. We further note that the Department of Labor (DOL) has addressed the shortage of nurses by designating professional nursing as a Schedule A occupation, indicating that there are insufficient U.S. workers able, willing, qualified, and available for professional nursing positions. 20 C.F.R. §§ 656.5, 656.15. *See generally* 6 *USCIS Policy Manual* E.7(C), <https://uscis.gov/policymanual>. This designation exempts U.S. employers of noncitizen nurses from having to test the labor market and apply to DOL for a permanent labor certification. 20 C.F.R. § 656.15. However, this is not a waiver of the job offer requirement, and as such does not support a finding that nursing-related work inherently has national importance in the context of a national interest waiver petition.

Regarding the endeavor's potential economic impact, the business plan states that the company will have 11 employees, a \$527,031 payroll, and \$820,629 in revenues in its fifth year of operations. However, the record does not include documentation establishing that this business activity would constitute a significant economic benefit to the United States, Florida, or any economically depressed region through employment levels or business activity, such that it would rise to the level of national importance.

The cover letter provided in response to the Director's RFE states that the company will operate "in the state of Florida, an SBA HUBZone area,"³ in order to "make a stand and an impact" by generating jobs, improving wages and working conditions, and encouraging regional investment. First, we note that only selected parts of Florida are designated HUBZone areas.⁴ As the Petitioner has not specified

³ The HUBZone program provides preferential contracting consideration to businesses in "historically underutilized business zones," including economically depressed areas, qualified disaster areas, and areas where military installations were recently closed. *See generally* U.S. Small Bus. Admin., HUBZone program, <https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program>; 13 C.F.R. § 126.

⁴ U.S. Small Bus. Admin., *HUBZone Map*, <https://maps.certify.sba.gov/hubzone/map> (last visited Sep. 27, 2023).

where her business will be located, we cannot find that it will be located in an economically depressed area or that it will provide economic benefits to such an area.

The business plan uses multipliers from the U.S. Department of Commerce's Bureau of Economic Analysis to calculate the endeavor's total economic impact, finding that it will create a "final demand impact" in employment equivalent to 191 jobs, and a "final demand impact in output" of \$1,732,808.01. First, we note that these statistics use the multipliers for the "professional, scientific, and technical services" industry. Given the nature of the endeavor, it is not apparent why the plan did not use multipliers for the healthcare or education industries. Second, the plan does not analyze these indirect impacts in the context of Florida's economy, and so does not establish that they would be so significant to that economy as to be nationally important.

Finally, while the business plan claims that the company will lower healthcare costs through its education programs, it does not document or quantify this impact. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. The fact that healthcare education, generally, may lower healthcare costs does not establish that the Petitioner's endeavor will lower such costs to an extent rising to the level of national importance. The totality of the evidence does not establish that the endeavor has significant potential to generate the kinds of "substantial positive economic effects" envisioned by *Dhanasar*. *Matter of Dhanasar*, 26 I&N Dec. at 890.

We acknowledge the documentation regarding the Petitioner's experience and qualifications and the recommendation letters commending her abilities and diligence. However, these relate to the second *Dhanasar* prong, which is concerned with the Petitioner's ability to advance her endeavor. They do not establish what impact her endeavor will have.

The Petitioner has not demonstrated that her endeavor's impact will be nationally important. Because she has not established her eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the other two prongs and hereby reserve those issues. *See INS v. Bagambashad*, 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 an applicant did not otherwise meet their burden of proof). The Petitioner has not established that she should be granted a waiver of the job offer requirement in the exercise of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.