



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

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

In Re: 28049738

Date: SEP. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a veterinary assistant, seeks classification as a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. 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 was well-positioned to advance her endeavor or that, on balance, it would benefit the United States to waive the job offer requirement. 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

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 initially indicated that she seeks to open a veterinary clinic in [redacted] Texas. The Director found that the Petitioner qualifies for the EB-2 classification as an individual of exceptional ability and that she meets the first prong of the *Dhanasar* test because her proposed endeavor has both substantial merit and national importance. The issues on appeal are therefore whether the Petitioner meets *Dhanasar's* second and third prongs by being well-positioned to advance her endeavor and by establishing that, on balance, it would benefit the United States to waive the job offer requirement in her case. On appeal, the Petitioner provides a brief regarding her qualifications for a national interest waiver.

A. Petitioner is Not Well-Positioned to Advance Her Endeavor

The second prong of *Dhanasar* examines the noncitizen's ability to realize their proposed endeavor by considering "factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any 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.

In the present case, the Petitioner initially proposed to open a veterinary clinic in Texas. In her initial filing, she provided copies of her educational and training credentials, her resume, professional experience letters, a business plan, letters of support, and various photographs. The Director issued a request for evidence (RFE) requesting, among other things, further documentation establishing her ability to advance the proposed endeavor, such as evidence of her past success in similar efforts, progress made towards opening the clinic, and interest shown by potential investors and customers. In response, the Petitioner provided a "definitive statement" of her endeavor, a Florida business registration, a revised business plan, and more letters of support, and resubmitted various documents from her initial filing. The Director concluded that this documentation was insufficient to establish the Petitioner's past record of success in similar endeavors or her progress in advancing the present one, and that she therefore did not meet the second *Dhanasar* prong.

On appeal, the Petitioner provides a brief stating that "she is fully capable and well positioned to advance the proposed endeavor due to her record of achievements and expertise in the field, as well as through her various leading and critical roles for the companies worked."¹ She does not specify any achievement or expertise that the Director overlooked. Upon a review of the record, we conclude that the Petitioner is not well-positioned to advance her endeavor.

We first examine the Petitioner's education, skills, knowledge, and record of success in related or similar efforts. The record indicates that the Petitioner earned the equivalent of a U.S. baccalaureate

¹ The Petitioner also indicated on her Form I-290B, Notice of Appeal or Motion, that she would submit a brief and/or additional evidence within 30 calendar days of filing her appeal. To date, we have not received a brief or additional evidence.

degree in veterinary medicine in 2019. She also worked as a veterinary assistant from July 2008 to January 2020. The support letters from her former teachers and employers indicate that the Petitioner is a capable and skilled veterinary assistant.² We conclude that the Petitioner has the education, skills, and knowledge to work as a veterinary assistant, as well as a record of past success in this role. However, the record does not indicate that the Petitioner is similarly prepared to open or operate her own veterinary clinic. There is no documentation in the record indicating that the Petitioner has ever run such a clinic or any other business. As such, we cannot find that she has a record of success as an entrepreneur.

We turn next to the Petitioner's model or plan for her future activities. In order to demonstrate eligibility by a preponderance of the evidence, the Petitioner must provide relevant, probative, and credible evidence establishing that their claims are "probably true." *Matter of Chawathe*, 25 I&N Dec. at 376 (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). Here, the record does not contain such evidence to support the claims made in the Petitioner's business plan. For example, the plan states that the business will be entirely self-funded, but is not accompanied by any documentation demonstrating that the Petitioner has the means to pay for the clinic's stated \$56,236 in startup expenses. The business plan also does not provide any support for its revenue projections, such as price lists for its services or comparisons to similar businesses and their prices and revenues. Instead, it states that "[t]he average established hourly services price will be \$49" without further elaboration. The plan also projects increased revenues every year without an increase in staffing or prices charged, a result which it does not explain. Assumptions such as facility rental costing \$1,200 a month are also not supported by documentation indicating that an appropriate facility can be rented in or elsewhere, for this price. It is therefore not apparent that the Petitioner has conducted a level of planning which makes her well-positioned to advance her endeavor.

The record also does not contain sufficient documentation to show that the Petitioner has made progress towards opening her clinic in the U.S. The business registration provided in response to the RFE is from March 2022, which is after the petition filing date of January 2022. Because eligibility must be established as of the time of filing, this evidence cannot be counted towards the Petitioner's eligibility. 8 C.F.R. § 103.2(b)(1). Furthermore, this registration is for the state of Florida, rather than Texas, where the clinic was originally to be located. While the revised business plan provided in response to the RFE includes some added information regarding the Florida economy and job market, it also retains the original plan's information about the business environment and plans to open in Texas. It is therefore not apparent whether the Petitioner plans to open her business in Florida, in Texas, or in both states. It appears that she materially changed her initial plan to open a clinic solely in Texas.

Petitioners may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (BIA 1988) (citing *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r. 1971)). The endeavor's location is material to both its national importance under the first *Dhanasar* prong and the Petitioner's level of preparation under the second prong. For this additional reason, the Petitioner's Florida

² The awards and press coverage the Petitioner submitted regarding her experience as a competitive rodeo rider are not relevant to her endeavor and so will not be analyzed under this criterion.

business registration does not indicate that she has made progress towards achieving her initial proposed endeavor in Texas.

As of the time of filing, the Petitioner had only composed a business plan for her proposed endeavor. The record does not indicate that she obtained funding, registered her business, or otherwise advanced towards the goal of opening a veterinary clinic at that time. The business plan does not indicate a level of progress that would make the Petitioner well-positioned to advance her endeavor.

Next, we examine whether the Petitioner has documented the interest of customers, users, investors, or other relevant entities or individuals. As noted above, the Petitioner claims that her business will be self-funded and as such will not require investors. While she did provide letters from potential customers in response to the Director's RFE, these letters are dated November and December 2022, well after the filing date of January 2022. Eligibility must be established as of the time of filing. 8 C.F.R. § 103.2(b)(1). The letters therefore do not document the qualifying interest of customers or other relevant individuals for the purposes of this prong of the *Dhanasar* test.

Finally, while not mentioned by the Director, we note that the state of Texas prohibits any business entity from engaging in the practice of veterinary medicine unless it is completely owned by a licensed veterinarian or veterinarians. Tex. Occ. Code Ann. § 801.506. It also prohibits veterinary assistants from making decisions about an animal patient's care or performing veterinary tasks without the supervision and instruction of a licensed veterinarian. Tex. Occ. Code Ann. §§ 801.363-4. The Petitioner's documentation does not mention working with a licensed veterinarian and her business plan does not account for paying for a veterinarian's services. While the original business plan states at one point that the company will operate in the industry of "specialty animal services, except veterinary," the information it provides regarding its industry, competitors, and suppliers all pertains to the veterinary care industry. Furthermore, the petition repeatedly refers to the endeavor as a veterinary clinic and the office blueprint provided includes rooms labeled "surgery center," "clinical care," and "hospitalization and recovery," indicating that the business is intended to engage in the practice of veterinary medicine. The Petitioner has not stated how her business would comply with Texas law without employing or being owned by a licensed veterinarian. While not a basis for denial, in any future filing, the Petitioner must address this deficiency.

The record indicates that the Petitioner has education, skills, and a record of success in her occupation of veterinary assistant. However, she does not have experience as an entrepreneur, and given her lack of funding, planning, and business registration as of the filing date, she has not achieved a level of progress that renders her well-positioned to advance the proposed endeavor.

The Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework. As such, we need not examine her eligibility under the third prong and hereby reserve this issue. *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 an applicant did not otherwise meet their burden of proof).

B. Visa Classification Eligibility

Upon de novo review of the record, we will withdraw the Director's conclusion that the Petitioner demonstrated her eligibility for the EB-2 immigrant classification as an individual of exceptional ability in the sciences, arts, or business. The exceptional ability classification initially requires petitioners to submit evidence meeting at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner's college degree and academic record meet the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), and the evidence establishes that she is a member of professional associations, meeting the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E). However, the Brazilian veterinary identification card the Petitioner submitted was expired as of the time of filing, and so cannot fulfill the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C), which requires "a license to practice the profession or certification for a particular profession or occupation." 8 C.F.R. § 103.2(b)(1). We will withdraw the Director's conclusion that the Petitioner meets this criterion.

As noted by the Director, the Petitioner's work experience letters do not state whether she was employed full-time, and therefore do not indicate that she has the ten years of work experience in her occupation, as required for the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). She did not submit evidence regarding her salary or other remuneration, and so has not established that these demonstrate her exceptional ability for the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D). Finally, while the support letters from the Petitioner's employers and teachers commend her abilities, the accomplishments they recognize consist of work which benefitted her employers and customers without having significance for the broader field of veterinary medicine. The letters, as well as the news stories mentioning the Petitioner, do not name any significant contribution that the Petitioner has made to her field or industry. This does not meet the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). The Petitioner has not met the initial evidentiary requirements of the exceptional ability classification. 8 C.F.R. § 204.5(k)(3)(ii).³

Further, the Petitioner has not established that she qualifies for EB-2 classification as an advanced degree professional. The record does not indicate that she has a U.S. academic or professional degree or a foreign equivalent degree above that of a baccalaureate. 8 C.F.R. § 204.5(k)(2). Additionally, while she has demonstrated her receipt of the foreign equivalent of a U.S. bachelor's degree, she has not demonstrated that she has five years of progressive post-baccalaureate work experience in her specialty. 8 C.F.R. § 204.5(k)(3)(i). The Petitioner has not established eligibility for the EB-2 visa classification, and we withdraw the Director's finding to the contrary.

C. National Importance of Petitioner's Endeavor

We will additionally withdraw the Director's conclusion that the Petitioner meets the first prong of the *Dhanasar* test. This prong, substantial merit and national importance, focuses on the specific

³ Because the Petitioner's eligibility for a waiver of the job offer requirement is dispositive of this case, and because she has not met the initial evidentiary requirements for the exceptional ability classification, we will not conduct a final merits analysis to determine whether the Petitioner has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business, such that she will substantially benefit the economy, cultural or educational interest, or welfare of the United States. 8 C.F.R. 204.5(k)(2); section 203(b)(2)(B) of the Act. We note, however, that her awards and media coverage are almost entirely related to her rodeo riding, rather than her work as a veterinary assistant. The Petitioner should be prepared to address this issue in any future proceedings requiring her to demonstrate her eligibility for the exceptional ability classification.

endeavor the Petitioner proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. While we agree that the Petitioner's endeavor has substantial merit, the record does not establish its national importance. National importance is determined by examining an endeavor's potential prospective impact. *Id.* An endeavor may qualify if, for example, 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.*

Here, the record does not contain sufficient evidence to establish what impact the Petitioner's endeavor would have beyond her customer base and employees. There is no indication that the Petitioner's endeavor will have national implications in the broader field of veterinary medicine. The evidence also does not establish how a veterinary clinic employing three to four people will generate sufficient business activity to constitute a significant economic benefit to the United States, Texas, Florida, or any other region, such that it would rise to the level of national importance. Therefore, the Petitioner has not demonstrated the national importance of her endeavor, and we will withdraw the conclusion that she meets the first prong of the *Dhanasar* test.

III. CONCLUSION

Because the Petitioner has not met the second prong of the *Dhanasar* analytical framework, she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. Furthermore, we will withdraw the Director's conclusions that the Petitioner qualifies as an EB-2 individual of exceptional ability and meets the first prong of the *Dhanasar* test. The petition will remain denied.

ORDER: The appeal is dismissed.