



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

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

In Re: 30627253

Date: APR. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a pharmacist and entrepreneur, 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 had not established that a waiver of the required job offer, and thus of the labor certification, would be 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,<sup>1</sup> grant a national interest waiver if the petitioner shows:

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<sup>1</sup> *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).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.

## II. ANALYSIS

The Director's decision did not render a determination as to whether the Petitioner qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability. Instead, the decision only addressed the Petitioner's eligibility for a national interest waiver. Therefore, the issue for consideration on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the substantial merit and national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.<sup>2</sup>

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

In a definitive statement submitted with the petition, the Petitioner stated that she intends "to continue using [her] expertise and knowledge gained over 20 years as a Pharmacist at hospitals and home care, to work as an Entrepreneur in the United States." She further claimed that she will open a business specializing in parenteral nutrition products in the State of Florida and serve as its chief executive officer.

The Petitioner also submitted a business plan for her proposed company in which she claimed that the company would hire a total of 27 employees, and earn a total revenue of approximately \$2.5 million, by its fifth year of operations. In addition to her definitive statement and business plan, the Petitioner submitted copies of her academic credentials, an expert opinion letter, letters of recommendation, and industry articles and reports.

The Director issued a request for evidence (RFE), noting that the record as initially constituted was insufficient to demonstrate that the proposed endeavor had substantial merit or national importance. The Director observed that the Petitioner did not provide specific insight as to what she intends to do in the United States, and requested a detailed description of the proposed endeavor so that the Director could evaluate her request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner resubmitted her business plan, asserting that her plan sufficiently outlined her proposed endeavor, which is "to provide parenteral nutrition products aimed at assisting patients unable to receive nutrients in amounts that meet the metabolic needs of the gastrointestinal tract." She

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<sup>2</sup> Because the Petitioner has not demonstrated her eligibility for a national interest waiver on appeal, we need not remand the decision for the Director to determine whether she qualifies for the underlying EB-2 visa classification.

also submitted additional industry articles and reports in support of her assertion that her proposed endeavor had both substantial merit and national importance.

In denying the petition, the Director determined that the Petitioner provided insufficient descriptions and documentary evidence to identify her proposed endeavor with specificity, and therefore had not established the proposed endeavor's substantial merit and national importance. The Director determined that in addition to providing a vague description of the proposed endeavor, the Petitioner had not shown, to the extent it could be understood, that her endeavor had significant potential to employ U.S. workers, offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner asserts that USCIS "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law to the detriment of the Appellant." The Petitioner also asserts, through counsel, that the Director disregarded the evidence submitted, and provides a brief emphasizing her qualifications as an entrepreneur in the pharmaceutical field and asserting that the evidence of record establishes the substantial merit and national importance of the proposed endeavor.

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Here, although the Petitioner stated her intent to work as an entrepreneur and provide parenteral nutrition products through her proposed company, the Director determined that the description of the proposed endeavor was too generalized and requested additional information regarding the nature of the endeavor. The information provided by the Petitioner in response to the Director's RFE, however, did not clarify or provide more specificity to the initially described proposed endeavor, and the assertions on appeal provide no new details. Overall, we have insufficient information concerning the proposed endeavor with which to determine whether it has substantial merit because the Petitioner's proposed endeavor has not been clearly defined and described. We therefore agree with the Director's determination that the Petitioner did not submit persuasive evidence to support a finding of substantial merit.<sup>3</sup> The Petitioner bears the burden to both affirmatively establish eligibility under the *Dhanasar* framework, of which substantial merit is one piece, and establish her eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

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<sup>3</sup> We note that the Petitioner erroneously states on appeal that the Director found that the endeavor has substantial merit and does not contest the Director's finding to the contrary. Accordingly, we deem this ground to be waived. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. at 336 n.5 (citing *Matter of R-A-M-*, 25 I&N Dec. at 658 n.2)).

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

We agree with the Director that the Petitioner has not provided sufficient documentation or explanation concerning how her proposed endeavor has national importance. The Petitioner’s business plan explains her intent to start a company specializing in parenteral nutrition products in Florida. The business plan states that her new business will benefit the U.S. economy because its sustainable and scalable growth will contribute to the strengthening of the American economy and generate more direct and indirect jobs for American workers. As previously noted, the business plan projects hiring 27 employees and earning revenue of approximately \$2.5 million by its fifth year of operation.

The record, however, does not sufficiently detail the basis for the company’s financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner also has not provided corroborating evidence, aside from claims in her business plan, that her company’s future staffing levels and business activities stand to provide substantial economic benefits to underutilized areas of Florida. As constituted, the record lacks evidence showing that earning revenue of approximately \$2.5 million and creation of 27 jobs by year five rises to the level of national importance.

The Petitioner claims on appeal that she demonstrated the national importance of her endeavor through previously submitted documentation of her expertise and experience in recommendation letters from colleagues discussing her work experience and expertise in the pharmaceutical field.<sup>4</sup> However, these documents relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar*’s first prong. To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of her work. *Id.*

The Petitioner’s resume and recommendation letters only address her past accomplishments working in the pharmaceutical field and do not address the national importance of her endeavor’s “potential prospective impact.” While we acknowledge that the Petitioner provided valuable services for her employers and their clients in the past, the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of her proposed endeavor rising to the level of national importance. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

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<sup>4</sup> While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

In addition, these letters do not show that the Petitioner's proposed endeavor will substantially benefit U.S. business industries and the field of pharmaceutical and nutrition. As contemplated by *Dhanasar*: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* The evidence does not suggest that the Petitioner's pharmaceutical skills differ from or improve upon those already available and in use in the United States.

The Petitioner also submitted an expert opinion letter from a professor emeritus of health administration at [REDACTED]. The letter significantly focuses on the importance of nutrition and nutritionists and their role in the U.S. economy, and also discusses the Petitioner's skills and abilities as an entrepreneur in the pharmaceutical industry. While the writer speculates on how the Petitioner's provision of nutritional products can potentially have a positive impact on American lives and the U.S. economy, she does not offer any persuasive detail concerning the Petitioner's proposed endeavor or how her endeavor's impact would extend beyond clients that she will serve. Nor does the record include adequate corroborating evidence to show that the Petitioner's specific proposed work in the pharmaceutical field offers broader implications in her field or substantial positive economic effects for our nation that rise to the level of national importance.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinion is of little probative value as it does not meaningfully address the details of the proposed endeavor and why it would have national importance.

The Petitioner further claims national importance of her proposed endeavor based on industry reports and articles describing the valuable role that entrepreneurs play in the success and viability of businesses. The record also includes information on the U.S. pharmaceutical industry as well as the importance of pharmacists and immigrant entrepreneurs on the U.S. economy. We recognize the importance of the pharmaceutical industry and related careers as well as the positive effects of nutritional education. However, merely working in the pharmaceutical field is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890. The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor. The Petitioner does not demonstrate that her proposed endeavor extends beyond her future clients and customers to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. The economic benefits that the Petitioner claimed depend on numerous factors and the Petitioner did not offer a sufficiently direct evidentiary tie between her provision of nutritional products and the claimed economic results.

Because the documentation in the record does not sufficiently establish, by a preponderance of the evidence, the substantial merit and 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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility under *Dhanasar's* second and third prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

### III. CONCLUSION

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.

**ORDER:** The appeal is dismissed.