



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

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

In Re: 31839844

Date: JUL. 11, 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 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 Texas Service Center denied the petition, concluding the record did not establish that the Petitioner merited a national interest waiver, as a matter of discretion. 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” *Id.* 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 USCIS may, as 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;

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<sup>1</sup> *See 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).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 individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

## II. ANALYSIS

The Director concluded that the Petitioner qualified as an advanced degree professional. The remaining issue to be determined on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner intended to develop a business providing wellness products and health consultation services in the United States, opening a compounding pharmacy in Florida during its fourth year of operation. A professional plan from the Petitioner submitted in response to a request for evidence describes her proposed endeavor as follows:

The company . . . will offer wellness products. The company will provide a range of high-quality formula-based products in the treatment of health problems . . . . All the products have been researched and developed by [the Petitioner], who for over decades has been serving and accompanying customers, collecting data, analyzing and researching natural products at her company in Brazil. The products marketed by [the company] . . . do not require a medical prescription and may, from year 02, be produced in quantity, being sold directly through [the company's] sales channels and distributed throughout the country.

The company will also provide online health consulting to customers. This will lead to a better understanding of the client's problems and the products are custom developed according to their needs and requirements. [The company] would help to reduce various health issues related to . . . sexual health, weight loss, anxiety & stress and their health consequences. [The company's] products and services can benefit the physical, sexual and mental health of its responders. Out of the top eight public health problems in American, [the company] can help balance five of them that are correlated with stress (obesity, cancer, diabetes, alcohol and drug abuse, heart disease), certainly reducing hospital and medication expenses.

The Director concluded that, while the Petitioner's proposed endeavor had substantial merit, she did not demonstrate that her proposed endeavor would have national importance. On appeal, the Petitioner asserts her petition "has been denied . . . due to errors in the judgement of [her] case" and that the decision "shows erroneous conclusion of rule and fact, bringing arguments that [go] against the statements within the *Matter of Dhanasar*." Although she asserts that the Director's arguments were "not in accordance with the evidence provided," the Petitioner does not specify how the Director erred in the decision. This alone is grounds for dismissal. An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v). Nevertheless, for the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her endeavor in order to establish her eligibility under the first prong of the *Dhanasar* analytical framework.

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.

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.” *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. Further, 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.

On appeal, the Petitioner first points to her qualifications and experience, highlighting letters from former clients and professionals in the pharmaceutical field positively discussing her previous work with them. We note that an individual’s qualifications and experience generally apply not to the first prong of the *Dhanasar* framework, but to the second, which discusses whether an individual is well positioned to advance a proposed endeavor.

The Petitioner contends that the letters provide evidence of the positive impact her work would have in the United States. She states, “The positive impact of my work, including the economic impact, arises naturally as a result of people being able to stay active, healthy, free to work and generate income in the country, instead of being in hospitals or at home taking care of their health problems.” However, the Petitioner does not explain how her previous work’s positive influence on several clients in Brazil demonstrates the national impact of her proposed endeavor in the United States. The Petitioner also states on appeal that she intends to not only work as a pharmacist but as a consultant “helping other American companies to grow in the area of preventative and healthcare as well.” Apart from these vague assertions by the Petitioner, the record does not contain evidence to substantiate that her business would grow businesses within the pharmaceutical industry or in any other healthcare field. Likewise, the Petitioner does not sufficiently articulate how her proposed endeavor would have a prospective national level impact on the health of Americans as claimed. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

On appeal, the Petitioner further emphasizes a submitted expert opinion letter stating that her “endeavor can greatly impact the pharmaceutical industry,” that “[m]ore than 131 people—66 percent of all adults in the United States—use prescription drugs,” and that “the U.S. spends over \$2 billion on drug development each year.” These assertions, however, do not clarify how the Petitioner’s company—competing with thousands of compounding pharmacies in the United States—would nationally impact a claimed multi-billion-dollar industry. The expert opinion letter also does not address the Petitioner’s intention to offer non-prescription wellness products aimed to address a wide

range of health issues, one of innumerable companies in the United States selling these products. The Petitioner implies on appeal that her intention to work in a healthcare field has innate national importance. However, again, 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.” See *Dhanasar*, 26 I&N Dec. *Id.* at 889.

The Petitioner’s business plan provides an overview of her plans for her company’s operation and describes positions she would hire, potential marketing efforts, and profit projections. However, the information in the business plan is not supported by objective evidence to demonstrate how her company would have a prospective national impact on the field or on an economy of any scale. For example, her business plan projects revenues totaling \$15,625,640 by the conclusion of its fifth year of operation, as well as the creation of 99 full-time employment positions and 569 indirect jobs. However, the Petitioner does not provide sufficient objective support for these projections, including probative evidence, to demonstrate that it is likely her company would have a positive national economic impact or a national prospective impact within the field. Again, a petitioner must support assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has not sufficiently established the national importance of her proposed endeavor based on its potential job creation or impact on the U.S. economy, nor has she provided adequate evidence to show that she would employ a significant population of workers in a particular region. The Petitioner has also not shown that her proposed endeavor would offer a region or its population substantial economic benefits through employment levels, business activity, or tax revenue.

Further, the Petitioner’s business plan references growth forecasts related to the compounding pharmaceutical industry, but she has not demonstrated that her proposed endeavor would serve to impact the industry or field more broadly, rising to the level of national importance. For instance, the Petitioner’s business plan asserts that an aging U.S. population will create increased demand for various pharmaceutical products. It is not clear how the Petitioner’s operation of a single compounding pharmacy and business providing health consultation services would address such a nationwide demand. And although the Petitioner’s professional plan discusses broad national issues related to drug manufacturing in the United States, it does not describe how her individual company would affect the industry in a manner that would alleviate or otherwise impact sweeping nationwide matters. Finally, while the Petitioner explains on appeal that her endeavor would “generate more than enough revenue and impact on the country to be considered as of national importance” (quoted as written), this reasoning is speculative and not based on any objective evidence related to her proposed endeavor, the outcomes of which she has not specifically defined. As such, the Petitioner has not sufficiently demonstrated that any prospective 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.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. 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 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 is otherwise ineligible).

### III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

**ORDER:** The appeal is dismissed.