



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

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

In Re: 29137562

Date: MAR. 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a pediatrician, 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 that 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 pursuant to 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. If a doctoral degree is customarily required for the specialty, the non-citizen must a United States doctorate or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(2).

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." Section 203(b)(2)(B)(i) of the Act. 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 U.S. Citizenship

and Immigration Services (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;
- 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 stated in their request for evidence (RFE) that the Petitioner was eligible as a member of the professions holding an advanced degree, acknowledging her foreign medical degree and the evaluation stating its equivalency to a first professional degree in medicine in the United States. While the Director did not include this conclusion in their decision, we agree with this and conclude that the Petitioner has established her eligibility for the EB-2 immigrant classification. So the sole remaining issue on appeal is whether she merits, as a matter of discretion, a national interest waiver.

### A. Substantial Merit and National Importance

The first prong of the *Dhanasar* analytical framework, concerning the substantial merit and national importance of the proposed endeavor, 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.

The Petitioner states that she intends to continue working as a pediatrician in the United States. In a document titled "Professional Business Plan," it is stated that she will participate in an "observership" in a pediatric hospital, "start a research fellow[ship]," and study for and pass the medical residency test. She also briefly mentions that in addition to working in a hospital, she will open her own pediatric medical office. In addition, she states that she intends to carry out scientific research in the United States, and it is stated in her "professional business plan" that she will publish articles in "PUBMED, JAMA, Cochrane, and New England, among other important scientific platforms for medical professionals worldwide."

As noted above, we focus on a petitioner's specific proposed endeavor when evaluating its substantial merit and national importance, and we agree with the Director's statement that the record lacks a detailed description of the proposed endeavor in this matter. This is particularly the case regarding the Petitioner's briefly stated plans to pursue medical research and open her own medical office or clinic. We note that the petitioner in *Dhanasar* provided a very detailed description of his research plans, focusing on hypersonic propulsion systems, computational fluid dynamics, and applications of research in these areas on the development of aircraft and spacecraft propulsion systems. *Id.* at 891-2. Here, other than announcing her ambitious plan to be published in leading medical journals, the

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<sup>1</sup> *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 is discretionary in nature).

Petitioner has not described the specific focus of her proposed research, or where or by what means she would conduct her research. Similarly, her brief statement of her desire to open a pediatric medical office or clinic is insufficiently detailed to support a finding under the first prong of the *Dhanasar* analytical framework. Although the “professional business plan” includes sections titled “target market,” “marketing,” and “solutions,” these include broad statements about the health care industry or details about the Petitioner’s career, not specific information about her proposed office or clinic. We will therefore focus only on her proposal to be employed as a pediatrician in a hospital in the state of Florida, as the duties of a practicing pediatrician are sufficiently described.

Regarding the substantial merit of the Petitioner’s proposed endeavor, the Director stated in their RFE that this element had been established, but did not reach this conclusion in their decision or provide analysis. As such it is not apparent on which evidence in the record the Director relied in evaluating the substantial merit of the proposed endeavor. In a cover letter from the Petitioner’s previous representative,<sup>2</sup> statistics concerning the health care industry in general are given without any supporting evidence. An expert opinion letter provides many of the same statistics about the economic impact of the health care industry, and adds information about the number of underinsured Americans and state of the Brazilian healthcare system without explaining the relevance of this information to the Petitioner’s proposed endeavor. While merit may be established in a number of broad areas, including health, the record lacks sufficient documentation establishing how the Petitioner’s specific proposed endeavor meets this requirement. The Petitioner’s reliance on broad, unsupported statements concerning the healthcare industry in the United States is insufficient to establish the substantial merit of her proposed endeavor.

Turning to the national importance of her proposed endeavor to provide pediatric patient care, on appeal the Petitioner refers to the statements made in her initial filing regarding her provision of pediatric patient care. She states that her work will lead to “lower spending on the treatment of diseases” and “a significant reduction in the number of intensive care unit admissions and chronic patients who need palliative care.” To establish the national importance of their proposed endeavor, petitioners must show that it would potentially have broader implications in their field. *Id.* at 889. While the Petitioner’s provision of patient care would likely impact individual patients, she has not demonstrated with supporting evidence how her work as a pediatrician would result, directly or indirectly, in the widespread economic and healthcare impacts she claims. Much like our determination in *Dhanasar* that the petitioner had not demonstrated how his work as teacher in STEM subjects would have broader implications for STEM education overall, here we conclude that the Petitioner has not established that her proposed endeavor as a pediatrician would have broader implications in the healthcare industry, and thus would be of national importance.

The record also includes copies of the Petitioner’s training certificates, documentation of her employment and wage history, an abstract authored by the Petitioner and published in a medical journal, and letters of recommendation. For example, the letter from [redacted] confirms the Petitioner’s participation as a physician in a clinical study of [redacted] virus. Another letter confirms her work as a pediatrician at the [redacted]. But this evidence pertains not to the national importance of her proposed endeavor, but to her ability to advance that endeavor as required under the second prong of the *Dhanasar* analytical framework.

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<sup>2</sup> The Petitioner submitted a new G-28 when responding to the Director’s RFE.

For the reasons discussed above, we conclude that the Petitioner has not established that her proposed endeavor is of substantial merit or national importance.

### III. CONCLUSION

A petitioner must meet all three prongs of the *Dhanasar* analytical framework in order to establish their 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 the second and third prongs of the 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).

**ORDER:** The appeal is dismissed.