



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

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

In Re: 28093402

Date: AUG. 31, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a pharmacist, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 Petitioner had not established a waiver of the required job offer, and thus of the labor certification, would be in the national interest.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 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. In addition, a petitioner must show 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if:

- 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.

¹ The Director indicated in the request for evidence (RFE) that the Petitioner qualified for the underlying EB-2 visa classification as a member of professions holding an advanced degree.

² See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

As it relates to the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a “Personal Statement” indicating:

My experience as a pharmacist allows me to confidently and progressively improve wellness and quality of life and promote appropriate therapeutic treatments. My area of interest is the treatment of newly acquired comorbidities. I want to work in community clinics that operate in several regions, do the pre-care, analyze the degree of impairment, and, if possible, provide care outside the hospital environment. Avoiding the hospital environment would be the best option. In the scenario where the therapeutic, preventive, and prophylactic treatment is better for the patient, the short and medium-term results, generate actions that cause a positive impact on the patient’s health and the financial sphere. I am especially interested in employing my exceptional knowledge and experience efficiently, which can contribute to the well-being of the population and the economy since I will use strategies for the conscientious use of drugs that do not burden the government.

The pharmaceutical industry has an active, fruitful collaboration, competes healthily, and provides access to the most modern technologies than any other country in the world. Thus, my knowledge and experience gained during my solid career as a pharmacist will contribute significantly to developing effective strategies and therapeutic approaches to treat people in their entirety and needs. I will contribute to a better and healthier life for the American population and protect the needs and interests of the American family by promoting a culture of humane, conscientious, coherent, cost-effective care and treatment and motivation to be more productive, resilient, and helpful for the wider community. Therefore, my actions will also impact the community of elderly and vulnerable people in the United States.

Further, the Petitioner submitted a “Personal Plan” stating:

. . . [The Petitioner] seeks to be granted a Permanent Residency approval to advance her professional intent, serve U.S. citizens and enrich their well-being, as well as to further explore the market in which pharmaceutical professionals . . . are in deficit and as such, are highly demanded.

More specifically, [the Petitioner] also intends to meet and address a shortage of highly experienced and skilled professionals in the Pharmaceutical Industry in the U.S., which are represents an area that she has particularly mastered and specialized throughout the years. . . .

. . . .

[The Petitioner] intends to provide well-targeted and effective services in the domain of pharmacy, focusing on medications dispensing, procurement, monitoring, and management of inventories along with effective logistics and sales services, proper drug storing, dosing, and advising patients how to manage pain and mitigate risks of drug abuse, and preparing and monitoring health surveillance reports, all in line with demanding safety industry standards.

In response to the Director's RFE, the Petitioner claimed "[t]he starting point for developing the endeavor will be given through my company in Florida, called [REDACTED] which will oversee pharmaceutical prescription and will reach throughout North America with its growth." The Petitioner also submitted a business plan and supporting documentation relating to the business. The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner maintains the national importance of her proposed business.

As indicated, the Petitioner initially claimed she intended to work as a pharmacist "in community clinics." However, in response to the Director's RFE, the Petitioner asserted for the first time that she intended to open and operate her own business, [REDACTED]. The Petitioner must establish all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. See 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of opening and operating her own business.

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 specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. Although she argued the importance of pharmacists and the pharmaceutical industry, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her particular pharmaceutical services in clinics rather than the importance of the occupation or the industry or field. In *Dhanasar*, we 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, as indicated above, the Petitioner contended the need for pharmacists in the United States. However, the alleged shortage of an occupation does not render her proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner emphasized her knowledge and experience. The Petitioner's experience, skills, and abilities in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor she proposes to undertake has national importance under *Dhanasar*'s first prong.

Moreover, 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. The Petitioner did not offer specific information and evidence to corroborate her assertions that the prospective impact of working as a pharmacist in a clinic rises to the level of national importance. In *Dhanasar*, we determined 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. Here, the record does not show through supporting documentation how her specific employment services stand to sufficiently extend beyond her prospective employer(s), to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not show that her initial proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show any benefits to the U.S. regional or national economy resulting from her pharmacy position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the 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. Further analysis of her qualification under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.³

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude she has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

³ 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 alternate issues on appeal where an applicant did not otherwise meet the burden of proof).