



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 23791690

Date: JAN. 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a medical researcher, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability, 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 the Petitioner's proposed endeavor was of national importance. The Petitioner appealed this decision, and we remanded the case to the Director for further consideration. The Director denied the petition a second time, concluding that the Petitioner materially changed her proposed endeavor and did not provide detailed evidence of a specific proposed endeavor. The matter is now before us on appeal once again. 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 discretion¹, 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 determined that the Petitioner qualifies for the underlying EB-2 classification. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the Dhanasar framework. While we do not discuss each piece of evidence, we have reviewed and considered each one.

The first prong, substantial merit and national importance, focuses on the specific endeavor 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 stated on her Form I-140 that as a “medical researcher,” she intends to “[d]esign and conduct studies to investigate human diseases, and methods to prevent and treat them.” In the initial petition letter, she reiterated her intention to “advance her career as a Medical Researcher, conducting relevant medical research, improving human health, and engaging in clinical investigations.” In her first professional plan and statement, the Petitioner stated that her proposed endeavor is to work as a medical researcher, “specializing in the areas of medicine, surgery, preventive medicine, ambulatory care, emergency medicine, nutrition, aesthetics, and clinical practice.” She asserted that she can “work in research and development at colleges or universities, professional schools, hospitals, pharmaceutical and medicine manufacturing companies, and even physician offices.” The Petitioner described her work as follows:

- Fill a position as a Medical Researcher that is vacant due to a large demand for such professionals.
- Investigate cause, progress, life cycle, or mode of transmission of diseases or parasites.
- Educate patients, communities, and peers on proper techniques and treatments through extensive research.
- Teach principals of medicine and medical and laboratory procedures to physicians, residents, students, and technicians.
- Confer with health departments, industry personnel, physicians, and others to develop health safety standards and public health improvement programs.

In support of petition, she provided letters from prospective employers. Specifically, National Medical Equipment, Inc. stated that it would employ the Petitioner as an assistant manager and VIP Walk-In

¹ 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).

Clinic stated that it would hire the Petitioner as a medical assistant. In her response to the Director's first request for evidence (RFE), she submitted a new "professional plan and statement" which made no mention of medical research, nor did the response letter from counsel. This new letter and statement indicated that she intends to continue to own and manage her medical supply business, as well as work towards completing the United States Medical Licensing Examination (USMLE) to allow her to obtain a medical license and to practice family medicine. The Petitioner also stated in these documents that she intends to become a franchisee for a medical clinic chain and to establish and operate health clinics in medically underserved areas. Additionally, the Petitioner stated that her "proposed endeavor involves serving any clinic, facility, or organization in need of her services." The Petitioner submitted letters of interest from prospective employers. Rede Integralle LLC, a medical clinic, expressed interest in employing the Petitioner in an unknown capacity. Elena Assisted Living Facility stated that it would employ the Petitioner as an Assisted Housing Administrator with administrative and human resources duties.

When reconsidering the petition and evidence after our remand, the Director issued a second RFE. The second RFE informed the Petitioner that she had materially changed her proposed endeavor from the initial filing and did not provide specific insight into what she plans to do as a medical researcher. In response, the Petitioner acknowledged the Director's concern regarding a material change in the endeavor but reemphasized her intention to plan and develop her own company in the medical field. The Petitioner stated that she "intends to continue working in the US in the medical field and not specifically as a Medical Researcher or Physician" (*italics added*).

In addition, her RFE response explained that she has the "ability to advise both foreign and American companies on their business expansion projects . . . meaning she can encourage major investment and trade opportunities by representing American interests both within the country and abroad." The Petitioner asserted that her evidence should lead to the conclusion that she can offer specialized knowledge and expertise "to address nationally important topics – such as assisting small and medium sized businesses that have been directly affected by the COVID-19 pandemic" and that she has the ability to support the "continued success and growth of local small and medium sized businesses within the nation."

The Director denied the Petition, noting that the Petitioner materially changed her proposed endeavor after the initial filing of the petition. Rather than providing additional evidence in support of her proposed endeavor as a medical researcher, the Petitioner proposed a new endeavor which involves obtaining a medical license to practice medicine, operating a medical supply company, and opening medical clinics as a franchisee, none of which included duties relating to medical research. The Director determined that the endeavor lacked specificity and therefore lacked the detail required to establish eligibility under the first Dhanasar prong. We agree.

The record reflects neither how the Petitioner proposes to advise companies on their business expansion projects or encourage major investment and trade opportunities, nor how she will offer her knowledge, expertise, and support to small- and medium-sized businesses. In addition, the Petitioner has not explained how this business activity relates to the other activities she proposes to undertake. Taken together, the Petitioner's proposed endeavor involves opening her own patient care clinic, continuing her business selling medical devices, conducting individual patient outreach on various devices and products, teaching employees how to use the medical devices, continuing her medical

education in the United States, supporting small- and medium sized businesses, encouraging other companies' investment and trade opportunities, possibly purchasing a franchise, and possibly working for other employers in the medical field.

The purpose of a national interest waiver is not to enable a petitioner to engage in a U.S. job search. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Upon our *de novo* review, we conclude that the Petitioner has not identified a specific endeavor. Instead, the record reflects numerous proposed activities, as well as a material change from her initially described proposed endeavor to conduct "medical research." On appeal, the Petitioner relies upon previously submitted evidence and arguments to support her eligibility for a national interest waiver.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the *Dhanasar* analysis. Because the Petitioner has not provided consistent information regarding a specific proposed endeavor, we cannot conclude that she meets either the first or second prong, or that she has established eligibility for a national interest waiver.

III. CONCLUSION

The record does not establish a specific and consistent proposed endeavor. Therefore, we cannot conclude that the Petitioner established eligibility under either the first or second *Dhanasar* prong, or that she has established eligibility for a national interest waiver. Further analysis of her eligibility would serve no meaningful purpose.

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 "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).

As the Petitioner has not met the requisite first and second prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.