



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

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

In Re: 27061917

Date: MAY 23, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, 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 the Petitioner's eligibility under the *Dhanasar* framework. 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.

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;

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).

- 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 issue to be addressed in this decision is whether the Petitioner has established eligibility for a national interest waiver under the first prong of the *Dhanasar* framework.² Although the Director did not make a clear finding, we accept that the Petitioner’s proposal to work as a nurse has substantial merit. We further note that 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 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.” *Id.* 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 determined in *Dhanasar* 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. 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.

In this instance, the Petitioner states that in his endeavor he will “serve an increasingly diverse patient base and provide a greater variety of acute care, rehabilitative and convalescent services.” The Petitioner did not specify whether he intends to work in a specific hospital or whether he will work as a traveling nurse. Further, although the Petitioner highlights his experience as an intensive care unit (ICU) nurse, differentiating it from the experience of “an ordinary registered nurse,” it is unclear how his ICU background is specifically relevant to the proposed endeavor, which does not appear to involve working in an ICU setting. The Petitioner also underscores the value of his experience as a nurse in the intensive, urgent, and emergency care settings, claiming that he will “directly impact[] several companies’ employees, professionals, and community [sic], contributing to the safety and effectiveness of treatment, care, medication and revenues in the country.” However, he does not specify the community his proposed endeavor would potentially impact, nor does he establish that impacting a specific community will result in broader impact over the nation’s healthcare or “revenues in the country.” In fact, it is unclear how the Petitioner’s patient care in any setting would impact the field of nursing, or the U.S. healthcare industry more broadly. Rather, the impact would likely be limited to the specific patients and workplaces the Petitioner plans to serve.

² Although the record as currently constituted lacks sufficient evidence to support the Director’s finding that the Petitioner qualifies for the EB-2 classification as an advanced degree professional, our conclusions regarding the national interest waiver are sufficient to determine the outcome of this appeal and no further discussion of the EB-2 issue is necessary at this time.

The Petitioner also discussed his nursing qualifications and claimed success in the past, which were further discussed in letters of recommendation from the Petitioner's professional acquaintances. However, the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is the first prong, which seeks to determine whether the Petitioner has demonstrated the national importance of his proposed work. Further, although the authors of the recommendation letters praise the Petitioner's abilities as a nursing coordinator and home care nurse supervisor, indicating their high regard for the Petitioner and his work, such letters offer no persuasive detail concerning the impact of the proposed endeavor or how such impact would extend beyond the patients and employers the Petitioner serves. Given the noted deficiencies, the recommendation letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*.

In addition, the Petitioner provided numerous industry reports and articles, including those about nursing occupations, the nursing shortage, and statistics on the nursing industry. While these reports and articles demonstrate the importance of the nursing field, they are not sufficient to support a finding that the Petitioner's specific proposed endeavor has national importance. 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." *Id.* at 889. Here, the articles and reports do not mention the Petitioner's specific proposed endeavor or demonstrate how its impact would rise to the level of national importance.

On appeal, the Petitioner contends that he adequately addressed the prospective potential impact of his endeavor in a previously submitted "Professional Plan" and expert opinion letter from a registered nurse who is an associate professor at [REDACTED] University School of Nursing. Although both the plan and the letter reiterated information about the national shortage of nurses and nursing faculty and further address how these shortages have been exacerbated by the COVID-19 pandemic, they do not establish the national importance of the Petitioner's endeavor, nor do they explain how the specific endeavor would impact the national nursing shortage, or how it would have a broader impact on the healthcare field or the nation as a whole.

Further, regarding the Petitioner's arguments that nursing is important for the nation's quality of life, productivity, societal wellbeing, and the U.S. economy, this reasoning focuses on the field of nursing and healthcare, not on the Petitioner's specific proposed endeavor, which is the focal point in a determination of an endeavor's national importance. Although the Petitioner seeks to demonstrate the national importance of his endeavor through claims that the endeavor extends beyond his employer and patients, he has not established that the endeavor would impact the field of nursing or the nation. Despite the substantial merit of the Petitioner's proposed endeavor, the record does not establish by a preponderance of the evidence that the endeavor meets the first prong of the *Dhanasar* framework.

III. CONCLUSION

The documentation in the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. As such, the Petitioner has not demonstrated eligibility for a national interest waiver and further analysis of his eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose.

Accordingly, because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any evidence or arguments concerning the Petitioner's qualification for classification under section 203(b)(2) of the Act or his 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 prong of the *Dhanasar* analytical framework, we conclude that he has not established that he 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.