



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

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

In Re: 28048866

Date: SEP. 6, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a mental health counselor, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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. Next, a petitioner must then demonstrate 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 USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

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 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

The Petitioner intends to work in the United States as a mental health counselor. At the time of filing, she was working as a clinical therapist for the [REDACTED] where she provided psychotherapy in English and Spanish to children and families referred by a primary care physician, social worker, or social counselor. In addition, she was employed as a clinical therapist for Revolutionary Change Counseling, a private practice that provides individual, couples, and family counseling to children, adolescents, and adults. The record further demonstrates that she established a Florida limited liability company in 2021 and intends to operate her own mental health practice.

In her personal statement submitted in support of the petition, the Petitioner described her proposed endeavor as follows:

One of my biggest visions for myself in this field is to consistently work on growing and evolving my job as a therapist, to be able to reach an innumerable amount of people in need of hope and help. For this reason, I also made the decision to open and pursue my own mental health practice, [REDACTED] My goals for this counseling practice [are] to continue to provide a safe space for emotional restoration, by offering individual psychotherapy to children, adolescents and adults, as well as giving patients the opportunity to participate in group counseling sessions. [REDACTED] will also be a practice that will offer consultation and training, with the goal of implementing therapy services from a multidisciplinary approach alongside other mental health counselors, as well as psychologists and psychiatrists.

The Petitioner also submitted copies of her academic credentials, industry articles and reports, letters of recommendation, and copies of prior decisions issued by our office in support of her eligibility.

The Director issued a request for evidence (RFE), noting that the Petitioner's initial evidence was insufficient to demonstrate that the proposed endeavor had national importance. The Director determined that the evidence submitted did not demonstrate that the proposed endeavor would affect

or advance the broader industry, and further noted that the record did not establish that the Petitioner's particular endeavor would have broader implications for the field of mental health services. In response, the Petitioner submitted employment verification letters, an updated personal statement, an opinion letter, and additional articles and research.

In denying the petition, the Director concluded that although the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate that the Petitioner's work would impact the regional or national population at a level consistent with national importance. The Director determined that the Petitioner did not demonstrate that the benefits of her proposed endeavor would extend beyond the patients she intended to treat, and further noted that although she submitted evidence that she formed a limited liability company, the record contained no business plan or projections regarding anticipated revenue or the number of employees she intended to hire and train. The Director concluded that absent such projections, the record did not establish that the proposed endeavor would have substantial positive economic effects, such as revenue or job creation, and therefore the record did not demonstrate that the Petitioner's proposed mental health practice stood "to impact the regional or national population at a level consistent with having national importance."

On appeal, the Petitioner claims that the Director's decision was erroneous, noting that her endeavor "has significant national implications, substantial economic effects, and impact on society." She claimed that by addressing mental health issues with innovative treatments and preventative services, [her] endeavor will help individuals overcome mental health challenges and become more productive members of society, ultimately reducing costs and creating economic benefits. She also noted that her ability to speak Spanish will allow her "to provide a culturally responsive care to Spanish-speaking clients." Finally, the Petitioner asserts that the Director erred by not properly analyzing the evidence submitted, including her personal statements, probative research, expert opinion letter, and letters of recommendation.

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." *See Dhanasar*, 26 I&N Dec. at 889. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. The Petitioner submitted articles and reports addressing the importance of mental health counseling and psychotherapy, particularly in the aftermath of the COVID-19 pandemic. The Petitioner claims that such documents are probative research highlighting the importance of her work in the mental health field. While we acknowledge that these documents highlight the importance of mental health services and recognize the value of providing mental health services to those in need, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

Similarly, the Petitioner's personal statements emphasize the value of mental health counseling and the impact such services will have on a vulnerable part of the population, and claim that the provision of innovative therapy that focuses on a patient's individual needs will reduce the need for long-term counseling. She further asserted that such services are preventative in nature and will prospectively decrease the need for crisis interventions. The Petitioner, however, highlights the general benefits of mental health counseling instead of focusing on the prospective impact of her specific endeavor. Although she discusses the benefits of mental health counseling and psychotherapy at length, highlighting how her endeavor will reduce the incidence of mental illness, help improve the quality of

life for her patients, and ultimately create job opportunities and generate revenue and economic benefits through the establishment of her own mental health practice, she does not point to any corroborating evidence that would directly link her specific endeavor to the overall economy's growth. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

In addition, the Petitioner asserts that the expert opinion letter from a professor emeritus of health administration at the College of Liberal Arts at [] University provides independent and objective evidence demonstrating the national importance of her endeavor. The opinion letter notes that the Petitioner's "long-term goal is centered around her Florida-based U.S. company" and states that her "professional training and background [will] allow her to offer evidence-based, groundbreaking therapies that collaborate with each individual patient in creating a treatment plan that combines various interventions and innovative modalities to best target their unique concerns and needs, as well as the tools and interventions necessary to prevent various mental health concerns." The letter also discusses the importance of mental health, noting that it is a growing crisis and the need for counseling and therapy in the field is essential. The letter, however, does not explain how the Petitioner's proposed endeavor of operating her own mental health practice will have broader implications for our country. Although the writer recites the Petitioner's career history and experience and opines that she is well qualified and well positioned to advance her proposed endeavor, he does not articulate how the Petitioner's specific proposed endeavor of providing mental health counseling to individual patients through her own practice will have significant potential to employ U.S. workers or substantial positive economic effects in an economically depressed area. The letter, therefore, does not establish the national importance of the Petitioner's specific proposed U.S. work. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable.").

The Petitioner submitted recommendation letters from colleagues and acquaintances, who attest to the quality of her work and the potential impact of her proposed endeavor. Although the letters praise her for her work in clinical therapy and mental health counseling, the Petitioner's skills, expertise, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor she proposes to undertake has national importance under *Dhanasar*'s first prong. In addition, the letters discuss the impact of the Petitioner's work relative to their own experiences rather than the required broad impact to the mental health sector. *See id.* at 889.

The Petitioner also provided letters from her current employers discussing the requirements and expectations of each position. Although the letters and supporting documentation confirm her employment as a clinical therapist for each entity, the analysis in the first prong under the *Dhanasar* framework is prospective, focusing on the merits of the proposed endeavor, and is not defined by a petitioner's occupation at the time of filing. Again, the issue here is whether the specific endeavor she proposes to undertake has national importance under *Dhanasar*'s first prong. Although the employment letters establish her qualifications and experience working in the role of clinical therapist, such abilities relate to the second prong of the *Dhanasar* framework. *See id.* at 890.

In addition, we noted in *Dhanasar* that “we look for broader implications” of the proposed endeavor and 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.* While the Petitioner asserts that the economic effects of her proposed endeavor will reach beyond her company to impact the American workforce and national economy, the record does not support this assertion. Although the Petitioner claims that her company will create new jobs because she will hire trainers, administrative staff and other support staff to provide consultation and training services for mental health professionals, she did not demonstrate that such proposed future staffing would provide substantial economic benefits to Florida, the region, or the U.S. economy more broadly at a level commensurate with national importance. Moreover, her job creation projections are not supported by a business plan or details showing their basis or an explanation of how such projections will be realized. Even if the Petitioner had established a sufficient basis for those projections, they would not establish the national importance of the proposed endeavor. The Petitioner has provided insufficient evidence to demonstrate that her undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *See id.*

In addition, the Petitioner has not offered sufficient evidence that the area where her company will operate is economically depressed; that her company would employ a significant population of workers in those areas; or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. Without this evidence, we cannot evaluate the proposed endeavor’s impact on job creation or its overall economic impact. As such, the Petitioner has not supported the claim that her proposed endeavor stands to sufficiently extend beyond her patients and employees to impact the mental health services field at a level commensurate with national importance.

Finally, we note the Petitioner’s submission of several of our non-precedent decisions in which we sustained the appeals for petitioners seeking employment-based second preference immigrant classification and a waiver of the job offer. None of these decisions were published as a precedent and, therefore, these decisions do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Moreover, non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that 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.

ORDER: The appeal is dismissed.