



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

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

In Re: 28428801

Date: SEP. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a healthcare practitioner, 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, he 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.

On the Form I-140, Immigrant Petition for Alien Workers, the Petitioner stated that he intended to work as a surgeon and ear, nose, and throat (ENT) specialist by providing “comprehensive medical and surgical care for patients with diseases and disorders that involve or affect the ears, nose, throat, and related structures of the head and neck.” In a personal statement, the Petitioner stated that he “has been approved to participate as a rotator . . . at the [redacted] Health System Facilities in [redacted]” and that his “intention is to continue practicing in the field of General Surgery and ENT.”

The Petitioner also submitted copies of his academic credentials, industry articles and reports, an expert opinion letter, and a letter of recommendation in support of his eligibility.

The Director issued a request for evidence (RFE), noting that the record as initially constituted was insufficient to demonstrate that the proposed endeavor had substantial merit or national importance. The Director observed that the Petitioner did not provide specific insight as to what he intends to do in the United States, and requested a detailed description of the proposed endeavor so that the Director could evaluate his request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner submitted a new personal statement indicating his intent to work as psychiatrist at the [redacted] Community Hospital, an integrated healthcare delivery system with locations in [redacted] Florida. He further stated that in this capacity, he would help “patients overcome debilitating mental illnesses, remove barriers, and [help] people find a higher quality of life” and “deconstruct the stigma of mental illness and serve one of the greatest health needs in the United States.” In this new statement, the Petitioner omitted mention of seeking direct employment with [redacted] Health System Facilities as a surgeon/ENT specialist as initially claimed.

The Petitioner also submitted additional opinion and recommendation letters, as well as additional articles and reports in support of his eligibility for a waiver of the job offer.

In denying the petition, the Director determined that the Petitioner provided insufficient descriptions and documentary evidence to identify his proposed endeavor with specificity, and therefore had not

established the proposed endeavor's substantial merit and national importance. The Director noted that in addition to the general descriptions of his proposed duties, the Petitioner provided two different descriptions for his proposed endeavor. The Director noted that he initially stated his intent to work as a surgeon and ENT specialist, but later indicated in the RFE reply that he would work as a psychiatrist. The Director determined that in addition to materially changing the original proposed endeavor, the Petitioner had not shown, to the extent the endeavor could be understood, that his endeavor had significant potential to employ U.S. workers, offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner asserts that he has established, by a preponderance of the evidence, the substantial merit and national importance of his work, and that the Director's decision was in error because it "applied a stricter standard" of proof. The Petitioner further asserts that the Director erred by not considering the totality of the evidence provided both initially and in response to the RFE.

With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Preliminarily, we note that the Petitioner's proposed endeavor is material to whether the endeavor has substantial merit and is of national importance. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see also Dhanasar*, 26 I&N Dec. at 889-90. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

As noted above, the Petitioner introduced a new proposed endeavor in response to the RFE rather than providing evidence to establish the substantial merit and national importance of the proposed endeavor described in the initial petition. The Petitioner's new proposed employment set forth in the RFE reply describes a new set of facts regarding the proposed endeavor. The Petitioner's proposed endeavor to work as a psychiatrist was presented after the filing date and cannot retroactively establish eligibility. Accordingly, we find that the Petitioner made an impermissible material change to his proposed endeavor.² If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. *See* 8 C.F.R. § 103.2(b)(1). Therefore, on appeal, we will consider if the record demonstrates that

² Counsel for the Petitioner argues on appeal that the changes made to the proposed endeavor in response to the RFE did not constitute a material change because pursuant to INA § 204(j), "a Petitioner is able to change employment so long as it is within the same or similar occupation classification." Counsel's argument is misplaced, however, because this employment-based immigrant visa category is not tied to a specific job offer and individuals seeking a national interest waiver of the job offer requirement do not have to request job portability under INA section 204(j).

proposed endeavor submitted with the initial filing, surgeon and ENT specialist, has substantial merit and national importance. We conclude it does not.³

The information provided by the Petitioner in the response to the Director's RFE did not clarify or provide more specificity to the initially described proposed endeavor, but rather changed the focus of his work and his employment altogether. Overall, we have insufficient information concerning the proposed endeavor with which to determine whether it has substantial merit because the Petitioner's proposed endeavor has not been clearly defined. We therefore agree with the Director's determination that the Petitioner did not submit persuasive evidence to support a finding of substantial merit. The Petitioner bears the burden to both affirmatively establish eligibility under the *Dhanasar* framework, of which substantial merit is one piece, and establish his eligibility by a preponderance of the evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376.

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. 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 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.

We agree with the Director that the Petitioner has not provided sufficient documentation or explanation concerning how his proposed endeavor has national importance. The purpose of the national interest waiver is not to afford the Petitioner an opportunity to engage in a job search or further his own career while only adding ancillary benefits to the nation. It remains unclear as to what specifically his proposed endeavor involves aside from securing a job in a U.S. healthcare facility as either a surgeon, an ENT specialist, or a psychiatrist. Moreover, we do not know if he intends to perform all the functions he describes or whether he will perform in only one of the identified positions. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." See *id.* at 889. While it may include one or more of the positions outlined above, we conclude that the Petitioner has not provided a specific or consistent proposed endeavor activity such that we can determine its national importance.

Throughout the record and in his personal statements, the Petitioner points to his background, education, and experience in his field. The Petitioner's knowledge, skills, and experience in his field, however, 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 that he proposes to undertake has national importance under the second consideration of *Dhanasar*'s first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

³ As noted by the Director, the Petitioner did not sufficiently describe his proposed endeavor in his supporting statements, and appears to rely on the statements of his counsel to establish that his proposed endeavor has both substantial merit and national importance. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

The Petitioner claims that his proposed endeavor has national importance because the United States faces a significant national shortage of healthcare practitioners. In addition, the Petitioner asserts that doctors and medical providers are extremely important to the economy and that his proposed endeavor will offer substantial positive economic impacts. In support of his arguments, he offered numerous articles about the healthcare industry, its economic implications, and the challenges faced by healthcare providers in the aftermath of the COVID-19 pandemic. While these articles provide useful background information, they are of limited value in this matter, as the Petitioner's specific proposed endeavor remains unclear.⁴ Furthermore, 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 Petitioner has not established how his individual employment in one or more of the roles identified would affect national healthcare employment levels or the U.S. economy more broadly consistent with national importance. Further, it is important to note that the shortage of healthcare providers does not render his 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.

To the extent that the Petitioner's proposed endeavor can be understood, we conclude that he has not substantiated how his specific work in the healthcare industry will address a shortage of healthcare practitioners or positively impact the economy. Specifically, how one doctor will improve a national shortage or will trigger substantial positive economic impacts has not been explained. Assuming the Petitioner simultaneously or alternatively chooses to pursue his initial endeavor to work as a surgeon and ENT specialist, he has not provided sufficient information of how his work in the healthcare field would rise to the level of national importance. While such endeavors may impact the individual patients he treats or the employers for which he works, the national importance of this work has not been adequately explained or substantiated. Similarly, in *Dhanasar*, we determined 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.

The Petitioner further contends that the Director did not duly consider certain pieces of evidence and failed to apply the correct standard of proof when reviewing the evidence. In support, he relies primarily upon the evidence and arguments previously submitted. While we acknowledge the Petitioner's appellate claims, we nevertheless conclude that the documentation in the record does not sufficiently establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* analytical framework.⁵ For example, while the Petitioner submitted a letter of recommendation from [redacted] Executive Director of the Centro Medico [redacted] and former colleague of the Petitioner. [redacted] however, does not discuss the Petitioner's endeavor, but instead primarily focuses on the Petitioner's past work experience and accomplishments, specifically highlighting his

⁴ We further note that the Petitioner's counsel refers to these reports and articles throughout the record, asserting that the status of the U.S. healthcare industry impacts the U.S. people and its economy. On appeal, counsel emphasizes the Petitioner's experience in the field and generally asserts that his proposed endeavor will help alleviate the shortage of mental health practitioners and help the national economy by providing needed care and helping to promote mental health awareness. Again, the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 534 n.2 (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

⁵ While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

work as an internal surgeon for the Centro Medico [redacted] from 2011 to 2016. [redacted] further praises the Petitioner's work in the capacity of assistant professor of surgical clinical care for the Universidad [redacted]. Although the record contains statements regarding the Petitioner's lengthy career in the healthcare industry, and although [redacted] commends the Petitioner's qualifications and past work accomplishments, we have insufficient information concerning the Petitioner's proposed endeavor with which to make a determination concerning its substantial merit and national importance. We further note the submission of a letter from the Petitioner's current U.S. employer discussing his abilities as a psychiatrist. As previously noted, however, this new endeavor constitutes a material change to the proposed endeavor as initially stated, and we therefore will not consider this evidence in our analysis under the *Dhanasar* framework. Again, 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.*

The Petitioner also submitted advisory opinions from [redacted] professor of anatomy at the [redacted] in New York, [redacted] professor of psychology at [redacted] College, and [redacted] assistant professor of medical health at [redacted] University and University [redacted] Health Science Center. [redacted] letter generally discusses the Petitioner's qualifications as a medical doctor and his potential to teach and train other healthcare professionals in the United States. He does not discuss with specificity the Petitioner's initial proposed endeavor of working as a surgeon and ENT specialist for a U.S. healthcare company, or how such an endeavor will have national or global implications within the field, will have significant potential to employ U.S. workers, or will have other substantial positive economic effects, particularly in an economically depressed area as mandated by *Dhanasar*. *Id.* at 890.

Conversely, the letters from [redacted] focus primarily on the Petitioner's proposed work as a psychiatrist in the United States. As discussed above, this proposed endeavor, introduced for the first time in response to the RFE, constitutes a material change to the Petitioner's initial proposed endeavor and we will not consider it in our appellate review, as a Petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 175; *see also Matter of Katigbak*, 14 I&N Dec. at 49. Therefore, the writers' comments regarding the Petitioner's employment as a psychiatrist in the United States bear little evidentiary weight.

Although all the writers discuss the Petitioner's qualifications, as well as the importance of the healthcare industry, the growing demand for medical professionals, and the importance of mental health awareness, the advisory opinions do not contain a discussion of the initial proposed endeavor or its national importance but rather focus on either the Petitioner's new endeavor or the importance of the healthcare field in general. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinions are of little probative value as they do not meaningfully address the details of the proposed endeavor as initially described and why it would have national importance.

Because the Petitioner has not shown that he intends to pursue his initial endeavor and because he has not provided sufficient information and documentation regarding his proposed endeavor, he did not demonstrate that the endeavor has substantial merit and national importance. Therefore, we cannot conclude that he meets the first prong of the *Dhanasar* framework. 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 his eligibility under the second and third prongs. 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 he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.