



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

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

In Re: 26986228

Date: AUG. 10, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a certified nursing assistant, seeks employment-based second preference (EB-2) immigrant 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for a national interest waiver. 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Profession is defined as of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.¹ 8 C.F.R. § 204.5(k)(3).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” *Id.* 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 USCIS may, as matter of discretion,² 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.³

II. MEMBER OF THE PROFESSIONS HOLDING AN ADVANCED DEGREE

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record establishes that the Petitioner holds a foreign equivalent degree above a bachelor’s degree in accordance with 8 C.F.R. § 204.5(k)(2).

The Petitioner, however, has not established that her occupation qualifies as a profession requiring the minimum of a baccalaureate degree or the foreign equivalent for entry into the occupation. Although the Petitioner intends to eventually pursue additional education to become a registered nurse, the record shows that she is currently a certified nursing assistant. The record does not include evidence to demonstrate that the occupation of certified nursing assistant requires, at minimum, a U.S. baccalaureate degree or foreign degree equivalent. 8 C.F.R. § 204.5(k)(3). In addition, the Petitioner states in cover letters and a business plan that she intends to work full-time in nursing while operating a small consulting business; the record, however, does not demonstrate that her position as the chief executive officer of a company providing online consulting services in nursing assistance requires a U.S. baccalaureate or foreign degree equivalent for entry into the position. *Id.*

Based on the foregoing analysis, the record does not establish that the Petitioner qualifies for the EB-2 classification as an advanced degree professional. Therefore, we will withdraw the Director’s finding on this issue.

III. NATIONAL INTEREST WAIVER

The Petitioner intends to continue her work in the field of nursing in the United States while operating a small business providing consulting services and courses related to nursing. The Petitioner initially provided the following description of her proposed endeavor:

¹ Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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).

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

I seek employment as an independent business owner in the field of education and healthcare in the United States. With my unique background as a teacher and healthcare worker, I also want to pursue a career as a life coach in the field of public healthcare information. I really want to bring greater interest to the field of medicine, especially the opportunities available for people who want to enter the field of nursing.... I think that work needs to be done to improve the public's relationship with medical professionals. I believe that this relationship can be improved through the effective use of social networks like Facebook, Instagram, and YouTube, as well as through public speaking and consultative work.... I know that I can affect real change and help facilitate opportunities for those interested in the nursing profession, and help provide care for patients in hospitals, urgent care center, and doctors' offices nationwide. I have developed the necessary approaches to facilitate this consultative work, which will allow me to create a small business via optimization of social media and my own public speaking and teaching skills as an educator, and the perspectives I have gained as a nursing professional. I am confident that I will be able to pursue this business venture, while also working full-time as a certified nursing assistant.

The Director's decision discusses why the Petitioner does not qualify under either the second or third prongs of the *Dhanasar* framework. On appeal, the Petitioner reiterates the importance of her proposed endeavor and her qualifications to operate her company.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that 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 Director's decision does not provide an analysis of evidence submitted under the first prong. The decision lists evidence submitted and states that the Petitioner "established the substantial merit and national importance of the proposed endeavor." Conversely, in analyzing the third prong, the Director contradicted the previous statement by asserting that the Petitioner "has not established the proposed endeavor is of national importance as required in the first prong of the *Dhanasar* framework...." As the Director's determination concerning the first prong is unclear, and because we make a definitive finding on the second prong below, we will reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge, and record of success in related or similar efforts; a

model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

In discussing the Petitioner's qualifications under the second prong, the Director stated that the Petitioner did not sufficiently articulate the proposed endeavor and that, as such, USCIS could not accurately determine that the Petitioner is well positioned to advance the endeavor. While the decision does not contain further analysis of the Petitioner's qualifications under the first prong, we agree that the proposed endeavor is wide-ranging and generally vague in its goals, complicating any evaluation of the Petitioner's ability to advance the endeavor. The record includes a business plan in which the Petitioner provides the following concerning her company:

[The Petitioner's] business endeavor is to enhance the overall standard of medical services in the U.S. by providing high-quality medical training. To this end, the Petitioner will operate a business that offers medical consulting courses in the fields of nursing and medical interpretation.... The Company will pay special attention to hiring a high-quality professional staff of experienced Educators, Medical Interpreters, and Certified Nursing Assistants.... [The Company's] staff members will test the students, evaluate their knowledge and track their improvement. [The Company] will charge \$600 for the Certified Nursing Assistant course, and \$750 for the Medical Interpreter course.

It is not clear to what certification or other training standards the Petitioner or anyone she hires will be held outside of those imposed by the company itself, nor is it evident what training students will receive that would warrant the fees charged; the business plan does not include course descriptions or curriculums, nor does it provide examples of comparable course or certification offerings from other companies or institutions providing similar services. The Petitioner states that she "will provide in-company training to the employees and ensure that they provide efficient, well-rounded classes to the Company's students." Given the Petitioner's limited experience in nursing and her purported educational and employment history in sociology and teaching, it is not clear what unique or substantive knowledge she will impart to the "high-quality professional staff of experienced Educators, Medical Interpreters, and Certified Nursing Assistants" that she plans to hire. Also of significance is the fact that the business plan does not indicate whether the company's courses will be part of a training program approved by the California Department of Health, which is required by the state for nurse assistant certification.⁴ The Petitioner's business plan also provides the following:

[The Company's] headquarters will be located at [redacted] [redacted] California.... [The Company] will provide affordable online consultations and courses, primarily focusing on Certified Nursing Assistants (CNA) and Medical Interpreters courses. The Company will offer online theoretical classes and in-facility practical training to groups of students....

⁴ See Certification Training and Competency Evaluation Program, California Code of Regulations, Title 22 § 71835; see also Training Programs in Skilled Nursing and Intermediate Care Facilities, Health and Safety Code, Division 2, Chapter 2, Article 9 §1337.

We note that the address for the company's headquarters is also the Petitioner's mailing address of record. A search of publicly available sources indicates that this is a residential address, and it is unclear to what location or locations the term "in-facility" might refer. The Petitioner's business plan does not demonstrate that she will operate from a facility equipped to allow for her or for other instructors to conduct onsite training of an ambiguous nature to groups of students of indeterminate size.

The Director identified several items of evidence submitted to demonstrate the Petitioner's position to advance her endeavor that do not support her eligibility. The Director determined that letters of interest in taking the Petitioner's training appeared to be personal and not from professional parties with knowledge of the Petitioner's qualifications. Thus, the Director determined that the letters do not provide evidentiary weight sufficient to demonstrate that the Petitioner is well-positioned to advance her proposed endeavor. For example, one letter states the following:

I recently moved to the USA permanently and am interested in finding a job in the field of medicine. To work in the field of medicine, you need to know the minimum medical terminology.... I am interested in buying courses from [the Petitioner's] company and looking forward to their development and release to the market. I will be sure to buy from this company as I know that some of the developers have experience in U.S. hospitals.

This letter does not indicate how the author knows the Petitioner or the Petitioner's credentials beyond the fact that "some of the developers" have experience in U.S. hospitals. It does not indicate that the author understands the services to be provided by the Petitioner or provide any details about the prospective client relationship beyond that the author is "interested in buying courses." The author of a second letter states that she a teacher in Russia who is the Petitioner's former colleague and that the Petitioner "was a successful teacher." As to the Petitioner's proposed endeavor, the author states only that she has students who are interested in improving their medical English and that "we would be happy to become clients of her...company." A third letter states that the author is a nurse's assistant and expresses interest in being an instructor and consultant for the Petitioner's company; the letter does not state how the author knows the Petitioner or express an understanding of specific roles and responsibilities she would undertake working for the company. None of the letters are accompanied by the author's credentials demonstrating their relationship to the Petitioner or their knowledge of the field of nursing. These letters demonstrate limited interest in the Petitioner's business from a few potential customers and one potential employee; they do not demonstrate that the Petitioner is well-positioned to advance her proposed endeavor of providing medical training in the fields of nursing and medical interpretation.

The Director also identified a reference in the business plan to the Petitioner's submission of an application to an investment group, and the record contains an acknowledgment letter from the start-up accelerator; the Director noted that the Petitioner "did not submit any evidence of a response to indicate that the funding has been granted." The Director determined that, because the record does not contain any feasible plans for financial support from any firms or other investors, and there is no evidence of initial capital present to support the Petitioner's endeavor, the Petitioner did not establish that she is well positioned to advance her proposed endeavor.

On appeal, the Petitioner submits a brief in which she reasserts her qualifications based on her certifications and employment experience as documented in the record. While the Petitioner “respectfully contends that the decision...to deny this Form I-140 petition was in error,” she does not specify how the Director erred or what factors in the decision were erroneous.⁵ The Director’s decision questioned how the Petitioner’s education and experience best position her to advance her endeavor as an entrepreneur, and we note that, despite general language emphasizing the Petitioner’s “professional portfolio and managerial experience,” the evidence of record does not demonstrate the qualifications reasonably expected of an individual starting a business that anticipates a profit of over \$36,000 in its first year of operation. Indeed, much of the business plan discusses a broad vision of the Petitioner’s endeavor to “unburden the U.S. Nursing School Industry,” as well as challenges and forecasts within the healthcare industry; however, the numbers that the Petitioner provides with regard to her own company’s projected earnings and forecasts do not appear to originate from any objective source. Importantly, at no point in the record does the Petitioner provide an explanation of how she would maintain her full-time work as a nursing assistant while operating her business as its chief executive officer. In addition to the ambiguity of the proposed endeavor, the lack of detail concerning how the Petitioner will carry out the advancement of her proposal provides an incomplete picture on which to evaluate her qualifications under the second prong. Based on the evidence of record and the foregoing analysis, the Petitioner has not demonstrated that she is well positioned to advance her endeavor under the second prong of the *Dhanasar* framework.

The record does not establish that the Petitioner qualifies as a member of the professions holding an advanced degree, nor does the record establish that the Petitioner is well positioned to advance the proposed endeavor as required by the second prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. 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 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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established eligibility for the EB-2 classification. The Petitioner also has not met the requisite second prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.

⁵ An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. See 8 C.F.R. § 103.3(a)(1)(v).