



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 23116767

Date: NOV. 14, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a chief academic officer, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center determined that the Petitioner qualifies for the underlying classification and that his proposed endeavor has substantial merit. Nevertheless, the Director denied the petition, concluding that the evidence did not establish the national importance of the proposed endeavor, that he is well positioned to advance the proposed endeavor, or that a waiver of the requirement of a job offer would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner reasserts his eligibility, arguing that the Director did not review each piece of evidence properly and erred in the decision. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act, 8 USC § 1101(a)(32), provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one 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 in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director determined that the Petitioner submitted sufficient evidence to establish that he is a member of the professions holding an advanced degree. The remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework. While we may not discuss each piece of evidence individually, we have reviewed and considered each one.

A. The Proposed Endeavor

The Petitioner described himself as an expert in online education programming. He owns and operates [REDACTED], a Florida-based business, for which he serves as the Chief Academic Officer (CAO). His duties as CAO of [REDACTED] include serving as “the leader, spokesperson, and resident expert on curriculum, instruction, pedagogy, and learning.” He also provides [REDACTED] with long-term instructional vision and “work[s] to establish a culture of high expectation[s] and shared responsibility for equitable access to high quality and culturally relevant instruction.” He hopes to continue to create effective partnerships with diverse U.S. university professors as well as lifetime researchers and publishers. The Petitioner stated that he will advise [REDACTED] on various subjects dealing with effective planning, transformation, and management of digital education content to be delivered through [REDACTED] proprietary Learning Management System (LMS) platform. The Petitioner will use “state-of-the-art technologies” to meet the market needs of his company. [REDACTED] will provide learners with remodeled digital content from relevant publishers in accordance with the latest professional standards and trends.

In our de novo review of the record, we conclude that the Petitioner has not sufficiently identified a specific proposed endeavor. The record reflects several different roles within the proposed endeavor, and it is not apparent from the information provided if the Petitioner intends to work in some or all of the positions he describes. While serving as CAO of [REDACTED] the record reflects that the Petitioner also serves as a faculty member of [REDACTED] University [REDACTED] where he teaches classes and reviews dissertations. In addition, he works for [REDACTED] a company that conducts yearly conferences, targeting businesses and students in [REDACTED] Brazil and [REDACTED] Florida. It also appears that the Petitioner intends to continue running his Brazilian-based business, [REDACTED]

[redacted] Finally, the Petitioner provided evidence that [redacted]
[redacted] an entrepreneur within the digital education and distance learning field, intends to establish a new U.S. university and hire the Petitioner as the CAO of it.

In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Dhanasar*, 26 I&N Dec. at 889. Based on the evidence provided, we conclude that the Petitioner has not sufficiently identified a specific endeavor, nor has he explained how he will manage his time if he intends to pursue multiple positions. In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether it has both substantial merit and national importance. Here, the Petitioner has not provided a specific proposed endeavor and the lack of specificity impedes a conclusion that his proposed endeavor has national importance.

Regarding the new job offer, [redacted] expressed his intention to hire the Petitioner as CAO in a letter dated October 2021. As the Petitioner filed the instant I-140 petition in December 2019, this new job offer post-dates the filing of the Petition. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit he seeks at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998). Therefore, if the Petitioner intends for USCIS to consider this position as part of his proposed endeavor, he must file a new petition with evidence to support his eligibility under a new set of facts.

B. National Importance

Regarding the national importance of the proposed endeavor, the Petitioner stated that education broadly enhances societal welfare and cultural enrichment. He also stated that education is a matter the government has described as having national importance and is the subject of national initiatives. In his business plan, the Petitioner emphasized that his proposed endeavor involves hiring and training internal staff and external industry contractors, providing discounted low-end market prices for courses and programs, as well as positively impacting the U.S. economy through net profit, payroll expenses, and tax revenue. In addition to employing five internal employees and four contracted employees, the Petitioner provided growth projections for the next five years, which include \$150,873 in revenue and \$323,325 in payroll expenses by 2024. In further support of the national importance of the proposed endeavor, the Petitioner noted his past success in providing education programming, including that he fostered the exchange of ideas and information among businesses and countries, such as Brazil, the United States, and Finland. He also claimed that as a result of the professional relationships and business ventures he cultivated, he promoted the purchase of commercial and residential property in Florida.

The Director issued the Petitioner a request for evidence (RFE), which informed the Petitioner that, among other deficiencies, the evidence did not establish the national importance of the proposed endeavor. After considering the evidence the Petitioner provided in his RFE response, the Director explained that:

The Petitioner has not submitted evidence to demonstrate that his proposed endeavor is of national importance . . . [, and] failed to supplement the record with evidence that would establish how his online educational business would prospectively translate into benefits that would extend beyond his immediate projected business to have national benefits. . . . [The evidence] also does not demonstrate that the proposed endeavor offers benefits which would extend beyond the Petitioner's company and clientele to impact the online educational industry more broadly at a regional or national level. The record failed to establish that the Petitioner's specific endeavor would prospectively have any national impact on U.S. national online educational markets. . . .

The Director acknowledged the sales forecasts for [] but determined that the growth potential for the company did not demonstrate that the benefits to the U.S. regional or national economy resulting from the Petitioner's business would reach the level of "substantial positive economic effects" contemplated by Dhanasar. *Id.* at 890. The Director explained that:

The Petitioner has not offered evidence that the area in which the company will operate is economically depressed, that the company would use a significant population of workers in that area, or that the endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Nor does the plan demonstrate that any increases in employment or investment attributable to the company's operations stand to substantially affect economic activity or tax revenue in Florida or nationally. . . .

We agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of the proposed endeavor. Although the Petitioner described his past success in providing education programming, generating the exchange of ideas and information among businesses and countries, and promoting the purchase of commercial and residential property in Florida, we conclude that the Petitioner has not provided sufficient evidence to substantiate his claims. For instance, the Petitioner has not provided independent and objective evidence of increased property sales in Florida attributable to his work, nor has provided specific and detailed examples of how the exchange of ideas and information has impacted businesses and students. Moreover, it is not apparent how affecting businesses and students that engage him for his services represents an impact rising to the level of national importance.

To support his claims concerning the national importance of the proposed endeavor, the Petitioner relied heavily upon the importance of the education field. He provided articles and reports concerning governmental initiatives to promote education, as well as reference materials concerning the importance and expansion of online learning. In addition, he stated that his field will support programs that impact national initiatives. However, as the Director explained, "the Petitioner cannot simply infer the prospective national importance of the proposed endeavor from the field of endeavor." 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." See Dhanasar, 26 I&N Dec. at 889. We acknowledge that the field of education, including online education, is important; however, this is not necessarily sufficient to establish the national importance of the specific proposed endeavor.

Additionally, we agree that education broadly enhances societal welfare. Nevertheless, the Petitioner has not sufficiently established how his specific proposed endeavor will be available on a scale that rises to the level of broad enhancement to societal welfare. The record suggests that the Petitioner runs a private company with private technology and offers services to those who enroll, but it does not appear as though the Petitioner provides these services to the public or educational institutions at large. To illustrate, the Petitioner uses a proprietary LMS platform and “state-of-the-art technologies,” neither of which appear to be available to all educational institutions and all students nationwide. 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. Similarly, we conclude that the Petitioner has not sufficiently established that his proposed endeavor activities will broadly impact the field of education or the nation overall.

The Petitioner does not claim that he was the first to develop online and distance learning capabilities, such that he has impacted the field of education as a whole. Nor does the record support a finding that he has impacted the narrower field of online education. As explained, the Petitioner uses proprietary systems that are presumably not available to others in the field. As such, it cannot be concluded from the evidence provided that he or his business has impacted the field of online education. Further, the Petitioner has not provided sufficient detail concerning what his “state-of-the-art technologies” are. It is not apparent how other educators and distance learning providers would know about or have access to these technologies to improve their own online learning capabilities. Accordingly, the evidence does not suggest that the Petitioner’s business would impact his field as a whole, as opposed to impacting only the entities or individuals that purchase his company’s services.

In other parts of the record, the Petitioner also emphasized that his services impacted students and businesses in Brazil. For instance, he described how [redacted] has been a great success in Brazil.¹ However, the Petitioner has not sufficiently explained how the Petitioner’s services would be considered of national importance to the United States. Similarly, the Petitioner emphasized how his services boosted enrollment in [redacted] and a sister university in Brazil; however, the Petitioner has not sufficiently explained how improving enrollment for a private university in the United States rises to the level of national importance.

In support of his eligibility, the Petitioner provided an advisory opinion letter from [redacted] a professor of finance at [redacted] University. [redacted] offered his opinion on the Petitioner’s eligibility under the *Dhanasar* framework. Regarding the national importance portion of the opinion, [redacted] described how the Petitioner’s business will co-produce and facilitate academically distinguished online educational concepts and value-added programs of higher learning throughout Brazil with the goal of meeting the market’s increasing interest and demand for advanced U.S.-standardized digital learning content. However, [redacted] has not demonstrated how the proposed endeavor’s impact in Brazil translates to benefits or positive impacts for the United States.

[redacted] discussed statistics concerning online education, which supports a finding that the education industry is indeed important. However, as previously explained, the Petitioner must establish how the proposed endeavor is of national importance rather than relying upon the importance

¹ As previously explained, it is not apparent from the record whether [redacted] is part of the proposed endeavor.

of the field. In addition, [] described how the Petitioner's skills, experience, and education are extremely valuable and will benefit the United States overall. However, the Petitioner's expertise and qualifications 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 the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong. 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, [] opinion does not sufficiently address the national importance of the proposed endeavor. Rather, it primarily discusses the importance of the online education field and the expertise of the Petitioner.

In the numerous letters of support, colleagues and professional acquaintances praised the Petitioner's personal and professional qualities, as well as emphasized how he performed well in his positions. The authors of the letters described how the Petitioner's work, including lectures regarding his book and finance, impacted their companies and clients. However, even if the events the authors described were well attended, this would not sufficiently support a finding that the Petitioner impacted the nation or the field of education as a whole. For instance, [] explained how the Petitioner provided a financial coaching lecture in the city of [] in Japan. [] observed that more than 25 thousand foreign language speakers live in [] and that the Petitioner directly or indirectly affected them with his teaching. [] does not offer corroborative evidence to support the statistic that [] has 25 thousand foreign language speakers, nor does she explain how the Petitioner's teaching either directly or indirectly affected the entire city's population of foreign language speakers.

[] the Chief Executive Officer of [] provided information on the Petitioner's role as host and educator at nine different [] conferences from 2010 to 2018. He described the topics discussed at each conference and noted that the conferences had numerous renowned speakers and 5,000 paid attendees. However, like [], [] does not provide corroborative evidence to support his claims. Even if he had provided such evidence, it would still be unclear how the Petitioner's specific work within these conferences represents an impact to the field of education or to the nation as a whole.²

Generalized conclusory statements that do not identify a specific impact in the field have little probative value. See *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may

² Additionally, some of the events described in the letters of support occurred after the filing date of the petition. Such events do not sufficiently support a finding of eligibility under the first Dhanasar prong at the time of filing. As explained previously, USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

evaluate the content of those letters to determine whether they support the petitioner's eligibility. *Id.* See also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Here, the letters of support are of limited probative value as the authors do not sufficiently substantiate their conclusions with corroborative evidence, nor would such evidence, even if provided, demonstrate the national importance of the proposed endeavor to the United States. Rather, such evidence would support a finding of impact to Brazil or the specific individuals and businesses that utilized the Petitioner's services.

On appeal, the Petitioner references "unique business strategies;" however, he does not explain what these strategies are, how they are unique, or how the field of education or online education would be impacted as a result of them. To the extent that these unique strategies exist, the Petitioner has not provided sufficient evidence of how others would be able to utilize or benefit from them apart from contracting with or enrolling in [REDACTED]

Also on appeal, the Petitioner references the updated policy guidance on national interest waiver petitions. We are aware of the policy and have applied it in review of this petition. In addition to the specific guidance the Petitioner references on appeal, we note that the policy guidance also states that "[c]laims lacking corroborating evidence are not sufficient to meet the petitioner's burden of proof." 6 USCIS Policy Manual F.5D4, <https://www.uscis.gov/policymanual>. We acknowledge the Petitioner's experience and qualifications, as well as his intention to provide valuable services in the online education field. However, as we explained above, the Petitioner has not offered sufficient evidence and explanation to support a finding that the proposed endeavor has national importance. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner has not done so here. Therefore, he is not eligible for the benefit sought.

III. CONCLUSION

The documentation in the record does not establish a specific proposed endeavor, nor does it establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar* 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 remaining *Dhanasar* 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).

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. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.