



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

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

In Re: 22645913

Date: OCT. 31, 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 university professor of journalism, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business. She also seeks 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 denied the petition, concluding that, while the Petitioner established eligibility for the underlying EB-2 immigrant visa classification as a member of the professions holding an advanced degree, the record did not establish that a waiver of the classification's job offer requirement would be in the national interest. On appeal, the Petitioner asserts that she merits a national interest waiver and that the Director did not fully consider evidence in the record.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See 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. 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 qualifies as a member of the professions with an advanced degree. The record demonstrates that the Petitioner earned a master’s degree in communication sciences in Venezuela in 2002.¹ The remaining issue to consider is whether the Petitioner has established eligibility under the *Dhanasar* framework.

The Petitioner initially described her proposed endeavor as the creation of a training institute in radio journalism and radio programs production. Regarding her claim of eligibility under *Dhanasar*’s first prong, the Petitioner stated, “The objective is to plan the production of open access radio content that includes diverse genres and formats on topics of interest.” She further stated that the institute “would not only engage in ... training, but would also have the platform to broadcast the radio programs and establish partnerships with national and international networks. Initially the process would be through digital platform, Internet radio, and later on other waves as FM.” She described the project as “profitable and successful, since radio is a low-cost media with great mass impact and penetration. It can reach places where there is no television or Internet signal, but it can have access to those frequency waves and will go where no other media can reach.”

The Director issued a request for evidence (RFE) asking the Petitioner to provide a more detailed proposed endeavor. In response, the Petitioner submitted a statement describing her proposed endeavor in two phases: 1) to assist businesses in developing communication strategies and generate income to

¹ The Petitioner did not provide a U.S. academic equivalency in accordance with 8 C.F.R. § 204.5(k)(3)(i)(A) to establish the U.S. equivalency of her foreign master’s degree in communication sciences. However, we have reviewed the Electronic Database for Global Education (EDGE), an online resource that federal courts have found to be a reliable, peer-reviewed source of educational equivalencies. EDGE indicates that the Petitioner’s degree is equivalent to a master’s degree issued by a U.S. university, therefore we will not disturb the Director’s finding concerning the Petitioner’s degree. However, the Petitioner must address this evidentiary deficiency in any future filings.

allow funding for the second phase, and 2) to create the Audiovisual Training Center with a target demographic of Hispanic students in Texas. She described the phases as follows:

... starts by providing advice and consulting services to entrepreneurs and small companies in this country interested in having communication plans and media plans as corporate communication strategies within management guidelines, as well as in creating innovative and productive spaces of information, to disseminate and promote their projects, services or products to reach their audiences and be successful ...

... as a second phase of the project, I will create an Audiovisual Training Center, with emphasis on radio training, production, and management of radio programs, journalism, conduction, announcement, whose objective is to provide knowledge, training, and tools to students with the relevance and opportunity to learn and become specialized in this profession, planning and contributing to the production of open access radio content that includes various radio genres and formats such as magazines, reports, interviews, information, and opinion spaces, on topics of interest to the communities. Later on, the training offer will be extended to the TV and Digital Media areas.

She provided letters from individuals interested in retaining her services to develop communication strategies, as well as offering financial support for, and employment with, her proposed training center. She also provided printouts of online articles that she asserts were the basis of her research for her proposed endeavor.

Upon review of the record, including evidence submitted in response to the RFE, the Director concluded that the Petitioner did not establish that her proposed endeavor has substantial merit or national importance. On appeal, the Petitioner submitted a more detailed statement, further explaining how her proposed audiovisual training center is “aimed at people who want to perform a trade,” and will result in successful students “entering the labor market through radio entrepreneurship as a productive, profitable business, ... stimulating the economy in this sector and promoting the entrepreneurship of others.” Her statement describes her endeavor as “focused not only to learn a technical trade in the audiovisual area but also to train participants as entrepreneurs ... the center will advise on all matters related to entrepreneurship, ... which will contribute to the education policy of the United States through private investment.” She did not submit additional evidence in support of her statement on appeal.

Regarding the substantial merit of the Petitioner’s proposed endeavor, the Director stated that information about the proposed endeavor was “vague and general,” and that supporting evidence was “general and ... not specific to the endeavor.” On appeal, the Petitioner asserts that her proposed endeavor was “presented in detail, including the objective, the target public, a description of the equipment needed for the investment, the people needed (direct jobs), the fees that would be charged per student, among other aspects.” She further states that the Director’s decision focuses on only phase one of her proposed endeavor, but when considered in its totality the proposal “is framed within the guidelines of national priorities, such as education and entrepreneurship.”

Under *Dhanasar*, substantial merit of an endeavor may be shown in any of a number of areas, including, but not limited to, business, entrepreneurialism, science, technology, culture, health, or

education. *See Dhanasar*, 26 I&N Dec. at 889. Among the factors that may be considered, but are not required, are whether the endeavor has significant economic or cultural impact. *Id.* Here, the Petitioner describes her proposed endeavor as encouraging entrepreneurship through education in the field of radio journalism and programming. Upon examination of the record, including the Petitioner's statement on appeal, we withdraw the Director's determination that the Petitioner's proposed endeavor does not have substantial merit but find her proposed endeavor does not have national importance.

Regarding national importance, the Director stated in his decision that supporting evidence "does not support ... that the proposed endeavor will have potential prospective impact ... [or] demonstrate that her business stands to impact the regional or national population at a level consistent with having national importance ... [and] that her particular work would have broader implications for the field of communication."

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.* 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.

In her statement on appeal, the Petitioner points to her background, education, work experience, and specialized training in her field. The Petitioner's knowledge, skills, and experience in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890.² The issue here is whether the specific endeavor that she 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 her work.

In support of her proposed endeavor the Petitioner provided five printouts of the internet research that she asserts is the basis for her proposed endeavor. The first printout is from the website of a marketing company in Australia explaining how the company's services use audiovisual communication to improve business. Two other printouts are from the websites of audiovisual technology installation companies, one in the mid-Atlantic region of the United States and the other in Texas, explaining the benefits of installing and using audiovisual equipment in hiring and training new employees. A fourth printout is dated June 17, 2021, more than one year after the filing of the initial petition, and is promotional material from the website of an audiovisual integration business with locations in Georgia, Colorado and

² To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing her expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

Florida, discussing how using audiovisual technology in classrooms can improve learning. A final printout is from the Wikipedia entry on audiovisual education.

The Petitioner does not explain the relevance of these printouts to her proposed endeavor. She does not make a connection between the marketing material from an Australian company and the creation of a training institute in radio journalism and radio programs production in the United States. Nor does she explain the relevance of other promotional materials from equipment installation businesses with no mention of training individuals in producing and managing radio programs. And although the Wikipedia entry discusses the history, objectives, advantages and disadvantages of using audiovisual technology in teaching, the Petitioner does not explain how this demonstrates the national importance of her proposed endeavor.

The Petitioner also submits additional exhibits titled “References used in the Endeavor.” Four of these exhibits are articles in Spanish language with no English translation.³ Therefore, we cannot determine the relevance of these exhibits to the proposed endeavor. While three remaining exhibits are in English, their relevance is also unclear. One exhibit provides statistics on radio advertising revenue between 2019 and 2023 but does not provide any citations for the figures or source for the data. One exhibit is an online article about entrepreneurs who started a cooking equipment and ingredient business. Although the article mentions a rise in “new Latino entrepreneurship,” there is no mention of the field of radio or radio journalism. The final exhibit is a printout from the website www.nationaltoday.com, identifying November as “National Entrepreneurship Month” and providing a history of the acknowledgement. The significance of this information is not explained.

The supporting evidence does not demonstrate the “potential prospective impact” of the Petitioner’s proposed work. Although her statements reflect her intention to provide training for careers in the field of radio, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. 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. Here, we conclude that the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond her trainers, teachers, students or trainees to impact the field of radio journalism more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not shown that her training activities stand to provide substantial economic benefits in the United States. Here, the Petitioner has not submitted documentary evidence that would demonstrate that benefits to the regional or national economy resulting from the Petitioner’s undertakings would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Although on appeal she references data from the U.S. Department of Labor’s Bureau of Labor Statistics concerning “broadcast, sound, and video

³ Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner’s claims.

technicians” from 2020, this data is not specific to the geographic area of her proposed endeavor, nor does it clearly correlate to the specific field of training in radio programming and production that she proposes.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver.⁴

III. CONCLUSION

As the Petitioner has not demonstrated that the proposed endeavor is of national importance, she has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that she has not established she is eligible 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.

⁴ It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. Therefore, we decline to reach whether she meets the second and third prongs under the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); 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).