



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

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

In Re: 25937004

Date: APR. 21, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an athletic coach, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) 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. *See 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 Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that they 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. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petition 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.

Whilst 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). *Dhanasar* states that USCIS may as a matter of discretion

grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Director concluded that the Petitioner possessed an advanced degree related to their proposed endeavor but did not establish eligibility for a discretionary waiver of the job offer requirement, and thus of a labor certification. Whilst the Director recognized the substantial merit of the Petitioner's proposed endeavor, they nevertheless found that the Petitioner did not demonstrate that their proposed endeavor was of national importance, that they were well positioned to advance the proposed endeavor, and 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. Specifically, the Director found the Petitioner had not established that their proposed endeavor is of national importance because their business plan did not contain sufficient details or specificity (for example, the plan did not even mention where the Petitioner planned to undertake their proposed endeavor) such that they demonstrated the broader implications of the potential prospective impact of the endeavor rising to national importance or global implications in the field. The Director also concluded that no positive economic effects arose from the purported

employment opportunities and tax revenue from the Petitioner's endeavor even if an enterprise was formed from which the Petitioner could independently operate their proposed endeavor. We agree.

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 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 a 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirements, we look to evidence documenting the "potential prospective impact" of their work. The Petitioner's proposed endeavor in the United States is to function as an independently employed athletic coach of acrobatics and circus performance focusing on children with disabilities "because they lack self-esteem." The Petitioner vaguely asserted in their personal statement accompanying their initial petition that they will "develop effective training and methods" by "using fully customized and individualized approaches" as opposed to "standard and classic approaches in the development and education in the field of athletics." But they provided no specific detail or documentation to support their attestations.

The Director issued a request for evidence (RFE) to the Petitioner to submit additional information and documentation to support their claimed eligibility for a waiver of the job offer requirement, and that of a labor certification, under the *Dhanasar* framework.¹ In response, the Petitioner submitted a business plan, recommendation letters, and an advisory opinion. In their business plan, the Petitioner retained their proposed endeavor and expanded it to include a long term plan to establish their own enterprise, an acrobatics school, from which they could be independently employed along with employing other athletic coaches of acrobatics and circus performance.

Whilst the Petitioner's submitted documentation and information tends to reflect an intention to function as an athletic coach of acrobatics and circus performance focusing on children with disabilities, it does not contain sufficient detail to demonstrate that the potential prospective impact rises to the level of national importance. For example, although the Petitioner discusses the benefits of athletic coaching on combatting obesity and increasing physical fitness, they do not draw a sufficient connection to how the Petitioner's work in that field will broadly influence the field as a whole beyond their immediate activities. In essence, the Petitioner's endeavor is to "coach" or "teach" individuals, specifically children with disabilities through lessons in-person, online, and through social media interactions. The Petitioner describes the teaching activities of their proposed endeavor as innovative in comparison to standard and classical methods of teaching. But such teaching activities do not generally rise to the level of national importance. In *Dhanasar*, we determined that a petitioner's teaching activities did not rise to the level of having national importance because such activities do not have an impact on a specific field more broadly. *Id.* at 893. Here, we conclude based on the documentation and evidence that the Petitioner has not shown that their proposed endeavor will

¹ The Petitioner reiterates the argument and documents they submitted with the RFE response to in their appeal.

sufficiently extend beyond the individual clients that the Petitioner targets in whichever geographical location they choose to establish their enterprise in at a level commensurate with national importance. And aside from general aspirational statements about future employment opportunities and new tax revenue stemming from the Petitioner's potential enterprise, there is no material, relevant, or probative evidence to persuade by a preponderance of the evidence that the Petitioner's proposed endeavor will provide any positive economic effects at a level rising to national importance.

And the Petitioner submitted a number of letters of recommendation prepared contemporaneously for submission with the petition whose authors praise the Beneficiary's background, accomplishments, experience and abilities in the field with vague and general complimentary statements.² The general thrust of these letters is that a number of people have appreciated the Petitioner's work, experience, and accomplishments over their working life. But this does not establish the national importance of the Petitioner's proposed endeavor. The letters tend to show only the benefits and positive impact of the Petitioner's work on their own personal reputation and profile. And the letters do not provide sufficient detail or refer to any corroborating evidence in the record which would tend to demonstrate how the benefit of the Petitioner's proposed endeavor would impact the field of athletic coaching in a manner influencing national importance. For example, one writer credited the Petitioner with being an "exceptional performer/artist because of his ability to bring a unique skill and discipline to the team" but does not identify the skill or elaborate on it in a way meaningful for analysis of the Petitioner's proposed endeavor's national importance. Another writer who identified themselves as an Australian national surmised that the United States "places a high value on physical education" and that the Petitioner's proposed endeavor's "novel approach" thus supports the United States' national interest. But the writer provides no basis or qualifications for their opinion on the United States' interest and does not identify what the Petitioner's "novel approach" is other than a direct quotation from the Petitioner given ostensibly in preparation of writing their opinion. But, even if the Petitioner's "novel approach" were identified in a manner which allowed a meaningful analysis, it would not be apparent that the Petitioner's "novel approach" would impact the field in a manner commensurate with what would be expected to rise to national importance.

And the Petitioner also submitted an advisory opinion from [redacted] professor of sport management in the department of kinesiology at [redacted] University in [redacted] Indiana. The writer opined that the Petitioner's endeavor has national impact on the athletics industry because the Petitioner's proposed endeavor has broader implications on the health and welfare of children with disabilities. The writer also broadly references the broad implications of prospective improvements to occupational health and safety and anti-bullying initiatives from the Petitioner's endeavor. They also tout positive economic effects from the Petitioner's future enterprise's employment opportunities and taxations benefits. And they discuss the enhancement to society and cultural welfare stemming from the increasing the physical activity of children to reduce the incidence of childhood obesity and health and welfare in general. USCIS may, in its discretion, use as advisory opinion statement from universities, professional organization, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the submission of an opinion from an expert supporting the petition is not presumptive evidence of eligibility. *Id.* Moreover, opinions supporting the merits of an entrepreneur's business, business plan, product or technology given by relevant third-party reviewers such as prospective investors, retailers, or other

² While we do not discuss each letter individually, we have carefully reviewed and considered each one.

industry experts are generally more persuasive. This writer is not an industry expert in athletic coaching. They are a professor of sports management. And the content of the writer's opinion lacked relevance to evaluating whether the Petitioner's business and services rise to the level of national importance. The letter was internally inconsistent because it casted the Petitioner's field in "athletics" but later called it an "expressive art." This inconsistency diminished the opinion's value for evaluation of the Petitioner's proposed endeavor. The opinion also overwhelmingly discussed the importance of the Petitioner's industry and occupation as well as the Petitioner's previous experiences. But it was devoid of any meaningful analysis of the broader implications or the potential prospective economic impact of the proposed endeavor rising to the level of national importance.³

The Petitioner's aim to focus their proposed endeavor on children with disabilities is laudable. And reducing childhood obesity, increasing physical fitness, and raising self-esteem to combat the scourge of bullying is a net positive in general. The Petitioner did not identify where they would be performing their proposed endeavor, but the geographical location is not dispositive. We said in *Dhanasar* that the proposed endeavor's implications are not to be viewed solely through a geographical lens; broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. But the relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. And this is where the Petitioner's proposed endeavor weakens considerably because it is not sufficiently clear how Petitioner's performance of their proposed endeavor will have ripples of impact beyond the immediately benefitting group. There is no evidence or information in the record that makes this connection. So we cannot conclude that the Petitioner's specific endeavor's intention to improve societal and cultural welfare inherent in reducing childhood obesity and increase physical fitness to improve health and welfare and raise self-esteem to combat bullies rises to a level of national importance.

A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). The Petitioner has not met their burden of proof with persuasive material, relevant, and probative evidence which by a preponderance demonstrates broader matters implicating the national importance of their proposed endeavor.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the 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 alternate issues on appeal where an applicant is otherwise ineligible). So we conclude that the Petitioner has not established that they are eligible for or otherwise merit a

³ The letters and opinion the Petitioner has submitted focused on their individual accomplishments and expertise. It is important to note that the Petitioner's accomplishments and expertise are more relevant to the second prong of *Dhanasar*, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar* at 889.

national interest waiver of the job offer requirement, and thus of a labor certification. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.