



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

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

In Re: 28282420

Date: DEC. 15, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an educational consultant, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts, or business. 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).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish eligibility for the EB-2 classification or for a national interest waiver under the *Dhanasar* framework. 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.

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.” Section 203(b)(2)(B)(i) of the Act. 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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

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 individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.²

II. ANALYSIS

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

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 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.” *Id.* at 889. In *Dhanasar*, we further noted that “we look for the 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 determined in *Dhanasar* 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. 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.

The Petitioner stated that with her “diverse professional range of experiences in teaching and early child education, my intention and goals in the United States of America is to play a key role as a consultant in development of research in early childhood education which would support persons dealing with special needs.” The Petitioner provided several articles to support the claim of a teacher labor shortage in Illinois and in Florida. In addition, she stated that her research endeavors have focused on the study of young children from ages zero to seven years old and she plans to work “more extensively and consult on studies and research aimed at ensuring provision of quality educational services to children with special needs.”

In response to the Director’s request for evidence (RFE), the Petitioner further explained her proposed endeavor as “providing and advancing efficient early intervention educational services to young and special children (ages zero to seven years old) as an education consultant, by working extensively on studies and services aimed at ensuring provision of quality educational services to children with special needs and with specific target at low-income communities.” The Petitioner briefly described the importance of education in our society and the importance of providing special education to children with special needs.

While the Director determined that the proposed endeavor has substantial merit, he concluded that the record did not establish that the proposed endeavor has national importance.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

On appeal, the Petitioner asserts that the proposed endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health and education, and evidence that the endeavor has the potential to create a significant economic impact may be favorable but is not required. The Petitioner further repeats her assertions of a teacher shortage in the United States, and the importance of providing special education in the United States.

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 specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. The Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing early intervention educational services through her specific endeavor rather than the importance of special education or the education industry or field. In *Dhanasar*, we 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 addition, the Petitioner repeatedly emphasizes her experience, skills, and knowledge. The Petitioner's experience and abilities 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. The issue here is whether the specific endeavor she proposes to undertake has national importance under *Dhanasar*'s first prong.

Moreover, 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. The Petitioner did not offer specific information and evidence to corroborate her assertions that the prospective impact of working as an educational consultant rises to the level of national importance. In *Dhanasar*, we determined 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, the record does not show through supporting documentation how her specific educational consulting services stand to sufficiently extend beyond her prospective students to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner has not provided sufficient evidence to establish how the implications of her proposed endeavor to provide educational consulting services rises to the level of national importance. The record here includes support letters written on the Petitioner's behalf by her coworkers and graduate school instructors. These letters speak highly of the Petitioner's skill, knowledge, and dedication, and illustrate the impact she has had on her students and as part of her graduate program. However, the support letters and the rest of the record do not document any impact the Petitioner has had or will have on the broader field of special education beyond her immediate professional circle.

Further, 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. Without evidence regarding any projected U.S. economic impact or job creation directly attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial

positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed endeavor does not meet the first prong of the *Dhanasar* framework.

The Petitioner’s appeal also reiterates her claim that her endeavor is nationally important due to the shortage of teachers in Illinois and Florida and provides materials documenting the need for more workers in this field. However, she has not established how her individual special education teaching activities will resolve this shortage or impact it on a level rising to national importance.³

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We acknowledge the Petitioner’s arguments on appeal as to the third prong of *Dhanasar* but, having found that the evidence does not establish the Petitioner’s eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prong. *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 the applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established her eligibility for a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

³ We further note that the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. *See Matter of Dhanasar*, 26 I&N Dec. at 885; *see also* 20 C.F.R. § 656.1.