



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

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

In Re: 23863011

Date: JAN. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an educational researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, 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).

The Director of the Texas Service Center denied the petition, concluding that although the record demonstrated that the Petitioner qualified for classification as a member of the professions holding an advanced degree, she 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. 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.

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).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,² grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen’s proposed endeavor has both substantial merit and national importance; (2) that 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.³

II. ANALYSIS

The record reflects that the Petitioner qualifies as a member of the professions holding an advanced degree. The next issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest under the *Dhanasar* analytical framework.

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

In denying the petition, the Director decided that while the Petitioner’s endeavor has substantial merit and that she is well-positioned to advance her endeavor, the Petitioner had not demonstrated the national importance of her particular proposed endeavor, or 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.

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner indicated that she would be working as the director of student life for the

¹ 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) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 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.

[redacted] in [redacted] New Jersey.⁴ In a letter of support, the Petitioner indicated that she has conducted research in the area of gifted education, and claims that she will continue this research while employed by [redacted]. The record indicates that she holds a Ph.D. in educational psychology from [redacted] University. In support of her qualification for a national interest waiver, the Petitioner submitted letters of recommendation as well as evidence of her peer-reviewed journal publications, citation statistics, and conference presentations and abstracts.

The Director issued a request for evidence (RFE), asking for more information and evidence to establish the national importance of the proposed endeavor. In response, the Petitioner submitted a personal statement, as well as additional recommendation letters and a copy of her employment agreement with [redacted].

In her personal statement, the Petitioner described the proposed endeavor as follows:

As a research mentor at [redacted] I work with other research mentors to study the effectiveness of the two-year research program, a pedagogical approach that is rarely applied and studied among high school students, but have significant implications to secondary schools across the country.

[redacted] is a STEM-focused school featuring a two-year research program that requires each student to work on a research project in areas such as mathematics, engineering, computer science, data science, chemistry, and biology in his or her junior year, present their findings, and submit a paper and a poster at the end [of] their senior year. Being a school established just five years ago, [redacted] has had three classes of graduates who have completed the two-year program. Through the program that requires each student to complete a research project under the guidance of research mentors with expertise in related areas, students apply their knowledge, synthesize it, and create new knowledge by having research findings that would not have been obtained in other educational practices.

* * *

We have been collecting data for students to assess their research skills, and on track to have preliminary quantitative and qualitative findings by the end of this year. We are also conducting research to collect further evidence regarding how the program prepares the students for their college, career, and for other aspects of their lives. With the evidence found in the study, the research program carries significant implications for teachers and administrators from other secondary schools across the country to make their academic choices that benefit the STEM education in the United States.

* * *

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

I am currently working with researchers in [] University to study the current status and quality of cram schools in []. The study has significant implications in the policy-making and quality control over schools. Research shows that 55.5% of students in urban areas of China attend certain types of cram schools, including enrichment programs such as math Olympiad, classes that help underachieving students, and Internet-based classes in sports and music. We distribute surveys with current elementary and middle school students regarding the length and frequency of cram schools they are going to evaluate the current status, and the educational philosophy, curriculum, pedagogy, and faculty qualifications to evaluate the quality of such schools. My original research findings help understand the reasons behind the comparatively high achieving performance of Chinese students in Pisa math and science. We will also conduct additional research[] across the United States, followed by further comparisons that have implications for current school policies and curriculum design and quality in teaching.

Additionally, the Petitioner's employment agreement outlined her duties at [] as follows:

- a) Counsel students to help them understand and overcome personal, social, or behavioral problems affecting their educational and social life to address special needs of the students.
- b) Provide consultation and crisis intervention to students when difficult situations occur at school.
- c) Oversee and direct students activities and program outside of the classroom.
- d) Confer with parents or guardians, teachers, administrators, and other professionals to discuss students' progress, resolve behavioral, academic, and other problems, and to determine priorities for students.
- e) Organize activities or events to help school fundraising.
- f) Additional information about the Employee's duties and responsibilities are explained in the Employee Handbook.
- g) Mentor students on their research projects.
- h) Work with other research mentors to do pedagogical research and potentially further study the findings at [] among participants from different groups of population.

In denying the petition, the Director concluded that the Petitioner had not demonstrated the national importance of her proposed endeavor, as the evidence did not demonstrate the endeavor's potential prospective impact or show the wider economic effects of the endeavor. The Director noted that the Petitioner did not submit sufficient evidence to show the potential economic impact of the endeavor on the U.S. economy or establish that the proposed endeavor had significant potential to extend benefits beyond her current employer.

On appeal, the Petitioner asserts that the Director's decision was erroneous, stating that the decision to deny the petition was in error and that she is eligible for a national interest waiver. Upon review of the record in its entirety, we agree with the Director that the Petitioner has not sufficiently

demonstrated the national importance of her endeavor under the first prong of the *Dhanasar* analytical framework.

Preliminarily, we note that the Petitioner proposes to contribute to the field of education by performing pedagogical research in the field of gifted education while simultaneously working as the director of student life for [REDACTED] which requires the Petitioner to counsel students, provide consultation and crisis intervention, mentor students on research projects, and “supervise extracurricular programs such as student clubs, athletic activities, and weekend events, as well as handle discipline related procedures.” The Petitioner did not provide a timeline for when she would occupy each of these roles and it is not apparent whether the proposed endeavor involves the Petitioner performing both of these positions either simultaneously or consecutively. Overall, we have insufficient information concerning the proposed endeavor with which to determine whether it has both substantial merit and national importance because the Petitioner’s proposed endeavor has not been clearly defined. Despite the Director’s finding to the contrary, the Petitioner has not submitted persuasive evidence to support a finding of substantial merit. The Petitioner bears the burden to both affirmatively establish eligibility under the *Dhanasar* framework, of which substantial merit is one piece, and establish eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

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.” *See Dhanasar*, 26 I&N at 889. 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.

Here, it remains unclear as to what specifically the Petitioner’s proposed endeavor involves. For example, her employment agreement with [REDACTED] outlines eight specific duties to be performed. Out of those eight duties, seven are attributed to her duties as director of student life with, which suggests that the primary focus of her endeavor will be focused on direct student enrichment as opposed to pedagogical research. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *See id.* at 889. While it may include one or both of the positions outlined above, we conclude that the Petitioner has not provided a specific or consistent proposed endeavor activity such that we can determine its substantial merit and national importance.

Throughout the record, the Petitioner points to her background, education, and experience in her field, noting that she actively works in multiple national organizations on gifted education. The Petitioner’s knowledge, skills, and experience in her field, however, relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890.⁵

⁵ 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,

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.

The Petitioner's personal statement contains the bulk of the information we have concerning her proposed endeavor. While the Petitioner submitted numerous letters of recommendation from other researchers and academics in the field, none of the authors discussed the Petitioner's proposed future endeavor. Instead, the authors primarily focused on the Petitioner's past or current work. Although the record contains explanations of past and current research projects, we have insufficient information concerning the Petitioner's proposed future endeavor with which to make a determination concerning its substantial merit and national importance. Here, the Petitioner has not identified how much time she will spend researching, as opposed to counseling and mentoring students as the director of student life for [REDACTED]. This is significant, as 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.

The Petitioner also provided evidence of her research publications and that at the time of filing, her work had been cited to 11 times. While we acknowledge that evidence of the impact her past work has had provides a basis to suggest that her future work will have a similar impact, this past research acclaim does not in itself establish the national importance of the proposed endeavor. Here, the Petitioner has not identified the specific nature of her proposed future research so that we might determine its possible impact, nor has she identified how her future research will be disseminated into the educational community such that its potential can be properly evaluated.

The Petitioner also asserted that her membership in multiple national organizations in the field of gifted education is evidence of the impact her work has on the field. While we acknowledge the Petitioner's claims that her board positions and participation in various programs sponsored by these organizations indicate that her work has impacted the field, the record contains insufficient corroborative evidence that her ideas and teachings have been shared with and implemented by these organizations such that the broader impact of her work is established. The Petitioner's resume also references her participation in various presentation and conference activities but does not adequately describe her role in those events. We do not know, for instance, whether she actually presented or spoke at the conferences such that her ideas were disseminated. Nor has the Petitioner explained the difference between a paper presentation and a poster presentation.

To the extent that the Petitioner's proposed endeavor can be understood, we conclude that she has not substantiated how her specific work in the field of education will positively impact the economy. With respect to the Petitioner's counseling and mentoring in her role as director of student life for [REDACTED] we conclude that the record does not establish by a preponderance of the evidence that such activities would impact the field of education more broadly, as opposed to being limited to the specific students and school she will serve. Although her position with [REDACTED] suggests that she will provide valuable enrichment services to the enrolled students while simultaneously conducting research in the area of

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.

gifted education, she has not provided sufficient information of how her services in these areas would rise to the level of national importance. While such endeavors may impact the individual students or employer that the Petitioner works with, the national importance of this work has not been adequately explained or substantiated. Similarly, 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. Moreover, the Petitioner has not included sufficient evidence of what specific future research projects she intends to engage in within the realm of pedagogical research. Without this information, which would inform whether the research would have a broader impact and therefore national importance, we are unable to determine whether her endeavor meets the first prong of the *Dhanasar* framework.

Here, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond [] and its students to impact the educational field or U.S. economy more broadly at a level commensurate with national importance. The record does not include sufficient information or supporting evidence identifying the specific research projects the Petitioner intends to undertake to demonstrate the nature and extent of her proposed research, how she will disseminate her research, or how she will allocate her time given between research and her counseling and mentoring work.

For these reasons, the Petitioner did not demonstrate the substantial merit and national importance of her endeavor, and thus does not meet the first prong of the *Dhanasar* framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility under the second and third 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrate her eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.