



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

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

In Re: 20162051

Date: JAN. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a teacher and educational administrator, seeks employment-based second preference (EB-2) 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 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 the record did not establish the Petitioner's eligibility for the national interest waiver. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

## 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>1</sup>, grant a national interest waiver if the petitioner demonstrates that:

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<sup>1</sup> *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 proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

## II. ANALYSIS

The record demonstrates that the Petitioner, an educator with a master's degree from the University of [REDACTED] qualifies as a member of the professions holding an advanced degree. The remaining 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.

The Petitioner is an assistant professor and senior consultant in international relations at [REDACTED] University in Taiwan and an executive consultant to school administration at the affiliated [REDACTED] International School, a bilingual private school that offers primary and secondary (K-12) education.

When the Petitioner filed the petition in May 2020, she submitted a statement that contained few details about her intended work in the United States:

I intend to devote my rich educational management skills to improving the education of countless citizens. . . . I will dedicate my efforts to the development of K-12 international education and internationalization of higher education. . . . I am open to any possible opportunities to contribute to U.S. educational development.

The Director issued a notice of intent to deny the petition (NOID) in February 2021, stating that the Petitioner had not submitted detailed information to show the specific nature of the proposed endeavor. In response, the Petitioner submitted a more detailed statement and a business plan dated May 2021. The Petitioner stated that she intends to establish a “Center of Bilingual Education Resources and Research” to be called [REDACTED]. The Petitioner stated that “[REDACTED] will serve as a bridge to exchange professional knowledge and research output in Mandarin Chinese-English bilingual education among educational institutions in California, Taiwan and Hong Kong,” and address “the lack of trained and certified K-12 teachers” who are qualified to teach in “Mandarin Chinese-English dual immersion program[s].” The Petitioner asserted: “[REDACTED] consultation, service and activities concentrate on three major areas: teacher support, school support and research collaboration.”

The Petitioner stated that [REDACTED] would establish master's degree programs at universities in California and recruit “teacher candidates from . . . Taiwan and Hong Kong to attend the credentialed bilingual authorization program in California.” After training, [REDACTED] would seek to place those teachers in “K-12 schools in California that need Mandarin Chinese-English bilingual teachers.” [REDACTED] would also support the development of a “bilingual Mandarin Chinese-English curriculum” in “K-12 schools in California,” and support research into bilingual education.

### A. Substantial Merit and National Importance

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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director denied the petition, stating that the proposed endeavor has substantial merit, but the Petitioner had not shown that her endeavor would have a significant impact “beyond the organization and its clients to impact the industry or field more broadly.” The Director concluded that the proposed endeavor would primarily benefit [ ] trainees.

On appeal, the Petitioner asserts that the “proposed endeavor will have broad regional, national, and global implications in education and beyond. It has the potential to create employment opportunities in the U.S. and abroad. . . . Further, it will have positive economic and cultural effects through cross culture and bilingual teaching leading to a better understanding of the world.”

The Director does not appear to have given full consideration to all the elements of the proposed endeavor. While the training of bilingual teachers is a major part of the proposed endeavor, the Petitioner’s stated plans include other activities such as curriculum design which could, in principle, be widely implemented and thereby have a greater impact than the training of a small number of teachers. The Director may wish to issue a request for evidence in order to further develop the record and establish whether or not the entirety of the proposed endeavor has national importance.

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

In the denial notice, the Director’s discussion of this second *Dhanasar* prong was limited to two observations. First, “the petitioner’s education and experience qualifies [sic] her to work as an Educator,” and, second, the Petitioner did not provide enough information about the cost of the proposed endeavor and how she intends to finance the endeavor.

The Director’s discussion of the second prong is incomplete. The record does show that the Petitioner has significant experience as a teacher and as an educational administrator, but the proposed endeavor centers around the operation of [ ] as a non-profit organization and, eventually, a “private foundation,” according to the Petitioner’s stated plans. The Petitioner has not explained how her background as a teacher and administrator within the framework of a particular school or university has adequately prepared her to establish and run a “private foundation” like [ ]

On appeal, the Petitioner has submitted a significantly revised business plan for [ ] and evidence that her adult son has agreed to provide over \$500,000 toward establishing and operating [ ] This information was not available to the Director at the time of the denial, and we will therefore remand the matter so that the Director can consider this new evidence.

At the same time, we note that the revised business plan includes significant elements that were not in the first version of the plan. A prominent example is information about the [REDACTED] a nonprofit organization headed by a professor at [REDACTED] University [REDACTED]. The Petitioner executed a memorandum of understanding with [REDACTED] in August 2021, a month after the Director denied the petition. The Petitioner's newly described reliance on [REDACTED] appears to represent a material revision of the proposed endeavor, which does not establish that the Petitioner met all eligibility requirements at the time she filed the petition as required by 8 C.F.R. § 103.2(b)(1).

Also, when considering whether the Petitioner is well-positioned to advance the proposed endeavor, the Director must take into account the expected involvement of third parties. In this instance, the original version of the business plan in the record indicates that the Petitioner will seek collaboration with six universities in California, including the University of [REDACTED] and [REDACTED] University. The Director must consider whether the Petitioner has submitted any evidence that those universities have agreed to collaborate with the [REDACTED] project. The revised business plan submitted on appeal adds a seventh university, [REDACTED]. We note, first, that this amounts to a late-stage revision of the plan, and second, the Petitioner has submitted a letter of interest from a professor who is in the process of retiring from [REDACTED] but his statements do not represent a binding commitment by the university. The professor, instead, speaks primarily in his role as the head of [REDACTED].

For the above reasons, the record requires further development and consideration in order to establish whether or not the proposed endeavor, as originally described, meets the requirements set forth in *Dhanasar*.

At this time, we will not consider the third *Dhanasar* prong concerning whether a waiver of the job offer requirement would be beneficial to the United States. This issue hinges on still-unresolved questions concerning the first two prongs, and therefore is not yet ripe for appellate review.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.