



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

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

In Re: 27418837

Date: JUL. 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an instructional coordinator, seeks classification as a member of the professions holding an advanced degree. 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. 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.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies as an advanced degree professional but that the record did not establish that a waiver of the job offer requirement is 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 immigrant 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, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither 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 a matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

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 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 Director found that the Petitioner qualifies for EB-2 classification as an advanced degree professional, based upon her master of science degree from [redacted] University of New York in teaching English to speakers of other languages (TESOL). The Petitioner also possesses a master of science degree in technology management from [redacted] University. However, the Director found that the Petitioner did not establish that a waiver of the job offer requirement is in the national interest, concluding that the Petitioner established only the substantial merit element of the first prong, but did not establish the national importance element nor the second or third prongs of the *Dhanasar* analytical framework.

As to the proposed endeavor, the Petitioner stated on the Form I-140 that the proposed job title is “instructional coordinator.” In a statement submitted with the initial filing, the Petitioner further states that she intends to develop a project called “[redacted]” which she describes as a virtual reality educational tool. However, the Petitioner did not submit evidence of having designed a specific product or prototype, nor did she submit evidence of having created any of the related software or hardware, nor that she has created or designed any of the educational content or lessons that would be used with this product. Rather, the Petitioner states that the project will involve approximately 60 employees, including software engineers to develop the software and the hardware of the product and educators to develop the course content. The Petitioner did not claim to have already selected or hired any employees and stated only that it was her intent to do so. The Petitioner did not identify a business entity that she had formed to pursue this project, nor did she provide evidence of funding for this project.

In response to the Director’s request for evidence (RFE), the Petitioner submitted a supplemental statement in which she states that she specifically will be responsible for developing the methodology of the study programs that will be integrated into the virtual reality platform. The Petitioner states that she will also be responsible for the implementation and testing of these programs, and claims that she will implement innovative, high-quality, and cost-effective educational programs by collaborating with her team of educators, software engineers, IT specialists, and other staff. The Petitioner further stated that she had established a company in 2015 called [redacted] which she would use to pursue the [redacted] project. The Petitioner submitted a certificate of incorporation in which she is named as the incorporator of [redacted]. Additionally, she submitted the company’s 2021 corporate tax return, in which she is identified as the owner of 100% of the company’s voting stock. However, we note that in the initial filing the Petitioner described [redacted] as a prior employer of hers, and submitted a letter of support from an individual named [redacted] who claimed to be the chief executive officer and owner of [redacted]. The Petitioner did not address or attempt to explain this discrepancy. It is the Petitioner’s burden to resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Regardless of the ownership and history of [redacted] we note that the company’s 2021 tax return reflects no money paid in wages and only \$16,000.00 in compensation paid to officers. The

Petitioner submitted letters from two companies stating their intent to invest money in [REDACTED] for the [REDACTED] project, one stating that it would invest \$150,000.00 and the other \$175,000.00. However, the letters reflect only a nonbinding intent to invest rather than a binding commitment, and the Petitioner did not provide evidence of receipt of any funding.

As to the first prong of the *Dhanasar* analytical framework, the Director found that the Petitioner established the substantial merit of her proposed endeavor but not its national importance. Specifically, the Director found that the Petitioner's claims about the national importance of introducing virtual reality technology in schools relate to the field of education in general, rather than to her specific proposed endeavor. The Director also noted that the Petitioner described the proposed [REDACTED] project as a collaborative effort, and that it was not clear from the record that her work or activity is the sole catalyst or impetus of the proposed endeavor. The Director also found that there was insufficient evidence in the record to support the Petitioner's claims that the project has the significant potential to employ U.S. workers or to have other substantial positive economic effects. The Director also characterized the Petitioner's [REDACTED] project as a material change to the Petitioner's endeavor that was created in response to the RFE, and that it would not be considered to the extent that it was inconsistent with the endeavor as described in the initial filing.² Finally, the Director noted that although the Petitioner discussed shortcomings in the U.S. educational system, she submitted insufficient evidence to establish the specific problems she discussed and further did not establish that her proposed endeavor was a solution to these problems.

In determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

On appeal, the Petitioner asserts that an endeavor that has substantial merit must also have national importance, and because the Director concluded that the Petitioner established the substantial merit of the proposed endeavor, the Petitioner further asserts that the Director should also have concluded that she established its national importance. However, we conclude that this claim relies upon a mischaracterization of *Matter of Dhanasar*. As is clear from our precedent decision in that case, the determination as to whether a proposed endeavor has substantial merit and whether it has national importance are separate determinations. Analyzing an endeavor's national importance requires considering "its potential prospective impact" and whether it may have "national or even global implications within a particular field." *Id.* at 889. These considerations are not at issue when determining whether an endeavor has substantial merit. *Id.* The language and structure of *Matter of*

² Although the Petitioner did not address this specific finding of the Director on appeal, we note that the Petitioner does discuss the "[REDACTED]" project in the initial filing. Although we agree with the Director's ultimate conclusion that the Petitioner did not establish the national importance of the proposed endeavor, we disagree that the description of the [REDACTED] project in the Petitioner's RFE response constitutes a material change to the proposed endeavor, but rather an expansion of the initial concept.

Dhanasar—such as the repeated references to the requirement that a petitioner establish “both” of these elements, the separate descriptions of the substantial merit and the national importance analyses, and the separate discussions as to whether the petitioner in that case had established the two elements—make clear that these are separate determinations. We note that the USCIS policy also makes clear that these are separate determinations. *See generally* 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policy-manual>. As such, we disagree with the Petitioner that the Director erred by concluding that the Petitioner established the substantial merit of the endeavor while concluding that she had not established its national importance. Further, we disagree that the Petitioner has established the proposed endeavor’s national importance based solely upon the Director’s finding that the proposed endeavor has substantial merit.

The Petitioner also asserts on appeal that the Director erred by not concluding that the proposed endeavor has national importance because the Director acknowledged that the intent of proposed endeavor is for the virtual reality project to be implemented in more than one school. The Petitioner asserts that the fact that the project is not focused on a single school establishes that the project will have a broad impact. However, we disagree that any education-related proposed endeavor that seeks to reach beyond a single school must be of national importance. This claim is not supported by the language in *Matter of Dhanasar* that requires “national or even global implications” in order to reach national importance. *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we gave as examples of nationally important endeavors those that might result in improved manufacturing processes or medical advances. *Id.* The Petitioner has not established that the possibility of the virtual reality project being implemented in more than one school would result in the type of broad impact that an original mechanical process or a medical advancement would.

Next, the Petitioner contends that she has established the national importance of her proposed endeavor by submitting many articles that discuss the importance of virtual reality and technology in education. The Petitioner states (note: errors in the original text have not been changed):

I submitted lots of scientific articles from reputable sources and publications of the experts in the field speak highly of the importance and benefits of Virtual Reality and Technology importance into Education; top-rated U.S. Universities and Research Centers in the U.S. that testify about the importance and merit of the integration of virtual reality and technology into U.S. Education; other reputable sources that strongly support this topic, for example, U.S. Department of Education, U.S. Presidents’ (President Biden, President Obama as an example) official records where they support the topic of the proposed endeavor by providing huge portion of the state budget for the development in this field meaning that the topic of the proposed endeavor is of substantial merit and national importance. On top of that, I provided the letters from the U.S. Department of Education, Russian Federation Department of Education (Nizehgorod. Oblast’), the experts in the field admit that the project is of substantial merit and national importance.

However, none of the articles that the Petitioner references here discuss the Petitioner or her proposed endeavor specifically. Rather, these articles discuss the topic of virtual reality and technology in education in general. In determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will

work; instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” See *Matter of Dhanasar*, 26 I&N Dec. at 889. The articles and reports from the U.S. Department of Education that the Petitioner claims “admit that the project is of substantial merit and national importance” do not discuss the Petitioner’s specific project at all.³ The Petitioner submitted over 60 such articles that relate to the educational system in the United States, the state of remote learning, the use of technology in U.S. schools, and the various funding initiatives of the U.S. Department of Education. Such articles may be helpful in establishing the potential uses of or interest in a virtual reality project in U.S. schools. However, this relates to the substantial merit of the Petitioner’s proposed endeavor, which has already been established. Because these articles do not discuss the Petitioner’s specific proposed endeavor, they do not help establish that the proposed endeavor is of such a scale that it has the potential to have a broad impact on the field or to have significant positive economic effects, and as such, do not establish the proposed endeavor’s national importance.

The Petitioner also includes on appeal a numbered list of 12 unsupported assertions regarding the claim that the proposed endeavor has national importance. These include the assertions that the proposed endeavor “fully matches the current US [sic] national interest and need in promoting cyberlearning,” that the endeavor will “reduce the rate of unemployment among Russian-speaking migrants,” that “the proposed endeavor has significant potential to employ US [sic] workers,” and that the proposed endeavor “will broadly enhance societal welfare and/or cultural enrichment.”

The claims in this numbered list are stated summarily without support or explanation, and without reference to specific evidence in the record to substantiate these claims. However, we note that the Petitioner submitted a statement in response to the RFE in which the Petitioner discusses these 12 specific claims in more detail and with citations to the exhibits in the record. But these additional details and citations do not help establish the proposed endeavor’s national importance. The Petitioner cites only to the general industry articles and reports, which, as discussed above, do not support the national importance of the proposed endeavor. Although the Petitioner makes many claims that the proposed endeavor will provide substantial employment opportunities and will have a broad impact on education in various ways, none of these claims are supported by probative and persuasive documentation, and the Petitioner’s unsupported assertions alone are insufficient to establish these claims. Merely repeating the language in *Matter of Dhanasar* does not satisfy the Petitioner’s burden of proof. The Petitioner must submit relevant, probative, and credible evidence to establish the national importance of the proposed endeavor. See *Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner claims that the proposed product called “[redacted]” will be “unique and innovative,” that it will be “cost-effective, exciting for learners, easy to use, and productive for the educators,” and that it will “benefit the U.S. at a national level by making U.S. education more effective and affordable.” But as discussed above, the Petitioner’s proposed endeavor to create this product appears at this time to be not much more than an idea that the Petitioner has envisioned. Although the Petitioner submitted many articles about education and technology and many letters of support from colleagues and friends, the record contains very little specific information about the

³ Although the Petitioner refers to “letters from the U.S. Department of Education,” she did not submit letters of support from the agency on her behalf. Rather, the Petitioner submitted articles about the U.S. Department of Education and information from the U.S. Department of Education website.

Petitioner's proposed endeavor. The Petitioner does not describe what the physical product will look like or what specific capabilities the product will have, and the Petitioner submitted no evidence that any of the hardware or software for this project have been designed and no evidence that any of the course content has been created. Without any such specific evidence about the project, we are unable to evaluate the reliability of the Petitioner's claims about the product's effectiveness or whether the product has the potential to have a broad impact on the field of education or the use of virtual reality in education. As such, the Petitioner has not met her burden of proof to establish the national importance of the proposed endeavor.

The Petitioner has not established that her proposed endeavor has national importance, as required by the first prong of the *Dhanasar* analytical framework. Because the Petitioner has not met the requisite first *Dhanasar* prong, we conclude that the Petitioner has not established that she is eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 the applicant is otherwise ineligible).

III. CONCLUSION

Because the Petitioner has not met the national importance required by the first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.