



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

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

In Re: 26762144

Date: JUL 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a social worker, seeks classification as a member of the professions holding an advanced degree. *See* 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). 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 although the Petitioner qualified as an advanced degree professional, 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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal 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 first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

As a preliminary matter, the Petitioner alleges on appeal that “the underlying Decision erroneously applied the inappropriate standard of proof.” Except where a different standard is specified by law, the “preponderance of the evidence” is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375; *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the “preponderance of the evidence” is the standard of proof governing national interest waiver petitions. *See generally* 1 *USCIS Policy Manual* E.4(B), <https://www.uscis.gov/policy-manual>. While the Petitioner asserts on appeal that she has provided evidence sufficient to demonstrate her eligibility for a national interest waiver, she does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

The Petitioner is a social worker and intends to work in the United States as the program director of her non-profit organization “[REDACTED]”. She stated in her initial letter of support that through her company, she “will continue her imperative work in the United States, working with at-risk youth and their families to help decrease juvenile violence, self-harm, delinquency, and drug abuse, among the more prevalent afflictions plaguing our nation’s youth.”

The Petitioner’s business plan outlined the proposed endeavor as follows:

[The Petitioner] will organize and conduct various educational workshops for young people in impoverished communities. [The Petitioner] will visit schools, shelters, and youth detention centers, and through motivational speeches and workshops try to motivate troubled youth to stay on a clean path. She will focus on children and teenagers who are separated from their parents through both deportation and incarceration and help them deal with sadness and parting. [The Petitioner] will also help child victims of abuse, neglect, and bullying.

[The Petitioner] will seek fundraising from corporations that have social responsibility programs and are willing to invest to help their communities. [REDACTED] will

organize various events to raise donations from high-net-worth individuals, family, and direct owners. In addition the company will collect funds through online fundraising tools. [The Petitioner] has extensive experience as an educator and a social activist in the most remote regions of Brazil and Columbia. She has directed and coordinated various activism projects and has experience with running nonprofit organizations, projects, and fundraisers. Under her direction, the company is able to contribute to the overall U.S. economy by providing growth in a multitude of areas. Mainly, [REDACTED] will, through workshops and events, have a positive effect on troubled youth in the U.S. and help them socialize by overcoming various issues. By working with young delinquents and helping them recover through education, the company will positively influence the crime rate. [REDACTED] will also generate direct jobs and associated taxes.

According to the business plan's personnel summary, the organization will employ three individuals, namely the Petitioner, a part-time administrative assistant, and a social worker, and expects its payroll expenses to increase from \$37,000 to \$79,151 by 2023. Regarding benefits to the overall U.S. economy, the plan indicated that the organization will provide financial and economic benefits by employing up to three in-house employees and increasing the amount of payroll taxes. The plan further indicated the organization would provide social benefits by organizing workshops and socially engaging young people. In addition, it noted that with many people in the United States approaching retirement age, the need for social workers and administrative assistants will increase, and the Petitioner will facilitate knowledge transfer to the U.S. workforce through her company to help fulfill industry needs. Regarding financials, the business plan indicated that the company anticipates donations in the amount of \$72,000 and total capital after operating expenses of \$27,218 by its fifth year of operations.

In addition to the business plan, the Petitioner submitted recommendation letters and industry reports and articles in support of the substantial merit and national importance of her proposed endeavor.

The Director determined that the initial evidence was insufficient to demonstrate that the Petitioner was eligible for a national interest waiver, and issued a request for evidence (RFE). In response, the Petitioner submitted a response letter which included a case summary, the Petitioner's affidavit, and additional supporting evidence. The Petitioner reiterated that the goal of her proposed endeavor was to "inspire and educate young Americans and immigrants living in the country by helping them to confront and overcome the struggles of everyday life." She further stated that her organization would commence operations in [REDACTED] and ultimately expand throughout Florida and across the United States once funds and resources became available.

In denying the petition, the Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance, 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 those directly served by her non-profit organization. On appeal, the Petitioner submits a brief asserting that the decision to deny the petition was in error and that she is eligible for a national interest waiver.

In determining 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 *Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90. As noted, the Director notified the Petitioner in the RFE that she had not established that her proposed endeavor was of national importance. While we note the Petitioner’s submission of articles, studies, and reports related to juvenile justice and delinquency, and the social, emotional, behavioral, and mental health needs of youth in general, this evidence does not concern her specific endeavor of organizing workshops in an attempt to socially engage young people.²

On appeal, the Petitioner notes that her organization’s workshops will “offer preventative educational programs that build social and emotional competencies to enhance personality, resiliency, confidence, and character,” and claims her proposed endeavor is “indirectly affecting the lowering of the crime rate.” She also reasserts that her organization will create three in-house positions, thus creating U.S. jobs. However, as the Director noted, the evidence does not show that her company and its activities would have economic impacts beyond the families it would serve such that it will have broader implications for individuals or businesses in the United States.

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. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond her own company and the youth and families it seeks to help to impact the fields of pedagogy and social work or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the particular work she proposes to undertake offers original innovations that contribute to advancements in the fields of pedagogy and social work or otherwise have broader implications for her field. In addition, she has not sufficiently demonstrated that her specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. While the Petitioner’s statements reflect her intention to provide behavioral and emotional support to youth in need, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance.

The Petitioner’s affidavit and her organization’s business plan contain the majority of the information we have concerning her proposed endeavor. While the Petitioner submitted numerous letters of recommendation from other academics in the field, none of the authors discussed the Petitioner’s proposed future endeavor in sufficient detail. Instead, the authors primarily focused on the importance of social work in general and occupational shortages in the field.³ Although the authors provide explanations of past and current undertakings by the Petitioner, we have insufficient information

² While we may not discuss every piece of evidence submitted, we have reviewed and considered the record in its entirety.

³ While the Petitioner also notes the shortages of social workers as a factor to consider, such occupational deficiencies are directly addressed by the U.S. Department of Labor through the labor certification process and are not a basis for national importance under the first prong of the *Dhanasar* framework.

concerning the Petitioner's proposed future endeavor with which to make a determination concerning its national importance. For example, while the authors generally praise the nature of the proposed endeavor, noting that it is "important and critical" and provides an "essential service," they also provide broad claims and conclusory statements regarding the endeavor's national importance without providing sufficient detail regarding how they reached those conclusions. The letters do not articulate how the Petitioner's specific, proposed endeavor has national or global implications beyond those youth and families who will attend her workshops. USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, 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 letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*

Upon review, the Petitioner has not substantiated how her specific work in the field of pedagogy and social work will positively impact the economy. With respect to the Petitioner's workshops and her intent to empower young people through her role as program director for [REDACTED] we conclude that the record does not establish by a preponderance of the evidence that such activities would impact the fields of pedagogy and social work more broadly, as opposed to being limited to the specific youth and families her organization will serve. Although her position with [REDACTED] suggests that she will provide valuable support services to those attending her workshops and events, 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 children or families 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. *See Dhanasar*, 26 I&N at 893.

Finally, we note the Petitioner's claims regarding her expertise and prior career accomplishments in Brazil. These statements, however, address aspects of the second *Dhanasar* prong but do not address how the proposed endeavor in the United States has broader implications beyond her company and the families it will serve, as required by the first *Dhanasar* prong. *See id.* Moreover, the Petitioner's focus on appeal on the importance of providing social, emotional, behavioral, and mental health support to youth in general does not address aspects of the specific endeavor and how the performance of the planned activities under the endeavor would have broader implications, rising to the level of national importance as contemplated by *Dhanasar*. *See id.*

In summation, 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 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 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 demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.