



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

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

In Re: 27423048

Date: JULY 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the gym, health, and fitness clubs industry and in the martial arts studios industry, 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 that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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.

“Advanced degree” means any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. *Id.*

“Profession” means one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32),<sup>1</sup> as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

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<sup>1</sup> Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) 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>2</sup>, grant a national interest waiver if the petitioner demonstrates that:

- 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 Petitioner proposed to work in the United States as an entrepreneur in the gym, health, and fitness clubs industry and in the martial arts studios industry. He holds a bachelor’s degree in physical education from [redacted] University and a teaching degree in physical education and a bachelor’s degree in physical education from University [redacted]. He worked as a gymnastic teacher and a boxing, Muay Thai, and kickboxing instructor at Personal Vip Sporting Events and Activities from April 2012 to May 2015 and as the managing partner of [redacted] from July 2015 and January 2018. The Director determined that the Petitioner is eligible for the EB-2 classification as a member of the professions holding an advanced degree based on his combined education and experience, and we agree.

The remaining issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of that classification’s job offer requirement. We conclude that he is not. While we may not address each piece of evidence individually, we have reviewed and considered each one.

The first prong of the *Dhanasar* analytical framework, 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 Director determined that the Petitioner’s proposed endeavor to work as an entrepreneurial physical educator and trainer in the field of health and fitness has substantial merit, and we agree. However, the Director found that the evidence submitted does not support the Petitioner’s statements that the proposed endeavor will have potential prospective impact and determined that the Petitioner has not established that the proposed endeavor is of national importance.

On appeal, the Petitioner maintains the proposed endeavor has national importance and that it would be beneficial to the United States to waive the requirements of a job offer and thus of the labor

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<sup>2</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).

certification. The Petitioner does not submit new evidence to overcome the deficiencies noted in the Director's decision but submits duplicate copies of the previously submitted documents - business plan of his gym and martial arts studio, an expert opinion letter from a professor, and his resume.

The Petitioner proposed to open [ ] a gym and martial arts studio, which will provide cross training, boxing, kickboxing, Muay Thai, and Brazilian jiu-jitsu classes and a course in martial arts teaching techniques. The Petitioner also asserts that he intends to disseminate his knowledge by training and preparing future professionals.

The Petitioner contends that his endeavor will impact a matter of national importance. He further explains that the gym, health, and fitness clubs industry's revenue will grow 2% annualized to \$35.3 billion in 2027, that estimated profit in 2022 was \$3.1 billion, and that there are currently 113,000 companies and 960,000 employees in the United States. He also explains that the martial arts studios industry's revenue will grow 3.9% annualized to \$9.9 billion in 2025, that estimated profit in 2020 was \$538.4 billion, and that in 2020, there were 39,308 companies and 61,275 employees in the United States.

The Petitioner further contends that based on the importance and critical role of small businesses in the U.S. economy as noted by the U.S. Chamber of Commerce's Small Business Council and supported by the U.S. Small Business Administration (SBA), his company as a small business will bring substantial benefits to the United States. The Petitioner also asserts that the budget of the U.S. government for fiscal year 2023 provides significant funding to the SBA for various initiatives to support underserved entrepreneurs, small businesses, domestic manufacturing, veterans-owned small businesses and to combat climate change. We will discuss the Petitioner's assertions below.

In support of his request for a national interest waiver, the Petitioner submitted an expert opinion letter from [ ] an adjunct professor of business, entrepreneurship, and sports management at [ ] College. [ ] asserts that the Petitioner's proposed endeavor has national importance because his work in the field of health and fitness is in demand, because of the growth in the industry revenue and market size of the industry, because the Petitioner's endeavor has significant potential to benefit the United States by providing services and training to less experienced U.S. professionals and general public, and because regular physical activity has many positive health benefits, and lack of physical activity is associated with higher health care costs and utilization.

Regarding the expert opinion letter from [ ] USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). Nevertheless, USCIS is responsible for making the final determination regarding a petitioner's eligibility for the benefit sought. *See id.* We will also discuss the expert opinion letter below.

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 "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The revenue and profit projections and the current number of companies and employees in the industries provided by the industry reports and the expert opinion letter may support the importance of the gym, health, and fitness clubs industry, the martial arts studios industry, and the field of health and fitness. The studies

or reports provided by the U.S. Chamber of Commerce and the SBA may support the importance of small businesses in the U.S. economy. The expert opinion letter may support the importance of regular physical activity and its positive health benefits. However, these documents do not directly address the specific endeavor that the Petitioner proposed to undertake - establishing a gym and martial arts studio.

The Petitioner contends that his proposed endeavor as an exercise trainer and a group fitness instructor at [ ] has national or even global implications within a particular field. The Petitioner further claims that his training of professionals who will teach martial arts will promote well-being of people through sports activities and that he will collaborate with the community to raise social awareness. The Petitioner asserts that his company has a monthly project of 450 boxing, kickboxing, Muay Thai, and Brazilian ji-jitsu students and 30 martial arts teachers every three months and that all 480 students will disseminate his work method.

In determining national importance, we indicated 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.” *See Dhanasar*, 26 I&N Dec. at 889. 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of his work. While we acknowledge the Petitioner's claims, he has not provided sufficient evidence to substantiate them. For example, he has not provided sufficient documentary evidence that his proposed endeavor as an exercise trainer and a group fitness instructor at his gym and martial arts studio would impact the gym, health, and fitness clubs industry, the martial arts studios industry, or the field of health and fitness more broadly rather than benefiting his own gym and martial arts studio and its students, trainees, or clients. Without sufficient documentary evidence of their broader impact, the Petitioner's proposed employment does not meet the national importance element of the first prong of the *Dhanasar* framework.

With regard to the Petitioner's assertion that he plans to provide a course in martial arts teaching techniques and train and prepare future professionals, the record does not show that this undertaking has broader implications for his field, as opposed to being limited to those who participate in his training sessions. While the Petitioner's plans to provide training services have merit, the record does not sufficiently demonstrate that his instructional activities offer benefits that extend beyond his trainees to impact the martial arts studios industry or the field of health and fitness more broadly. Likewise, 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. *Dhanasar*, 26 I&N Dec. at 893.

In support of his application for permanent residence in the United States and request for a national interest waiver, the Petitioner submitted recommendation letters from various individuals. For example, the Petitioner submitted a letter from [ ] a general physician and pediatrician. [ ] states that some of his patients showed rapid improvements in their clinical

status of hypertension, diabetes, and depression after beginning physical exercises in a social project under the guidance of the Petitioner and that the Petitioner generated a great improvement in many people's lives. The Petitioner also submitted a letter from [REDACTED] a boxing, kickboxing, and Muay Thai instructor and a gym owner. [REDACTED] states that the Petitioner has developed an innovative training method, which generated impressive physical results in his obese students within a few months; that these results increased demand for his training from new students; and that his innovative method and fast result have made other personal trainers look for him to learn his innovative methodology. The Petitioner also submitted a letter from [REDACTED] a nutritionist, which states that after seeing some of his personal training students, she noticed a rapid revolution in the weight loss and fat percentage reduction of these students and that she referred her patients with obesity, hypertension, and diabetes to do personalized training with the Petitioner. These letters show the success of the Petitioner's training method for some obese students and some patients who suffer from hypertension, diabetes, and depression. However, the record does not sufficiently demonstrate that the proposed endeavor has national or global implications within the field of health and fitness or will broadly enhance societal welfare or physical and mental health of individuals residing in the United States rather than benefitting his students, trainees, or clients.

The Petitioner contends that his gym and martial arts studio will generate both direct and indirect jobs, which will impact the U.S. economy. The Petitioner asserts that his gym and martial arts studio will create 10 direct jobs and up to 51.29 indirect jobs during the first five years of operations and that he will implement the franchise system to expand his business to the entire territory of the United States. The Petitioner also contends that the positive economic impacts of his business come not only from the generation of jobs and income but also from the generation of economic alternatives for various economic areas through the stimulation of bilateral trade between Brazil and the United States, which will generate large economic and social dividends. In addition, the Petitioner contends that the revenue projection over the first five years of operations is upward, which will provide a positive tax collection for the American market.

Regarding the benefits to the local economy, the Petitioner contends that his company will positively affect and bring substantial economic benefits to Georgia, which is in a mild economic depression. The Petitioner further contends that his company's headquarters will be located in [REDACTED] Georgia, an economically depressed area due to 22.7% unemployment rate; there will be a great potential for absorbing local labor; and that his company will offer training courses to physical education and martial arts professions in the region at affordable prices. He claims that he expects to retain 2% of revenue to provide training workshops for new players and partners in the local community and that he will look for projects that the local community needs and desires.

As for the economic value and job creation that the Petitioner asserts his gym and martial arts studio will offer, the business plan includes projections of \$1,784,230 in salaries paid to the company's employees, \$3,871,120.32 in total revenue, the creation of 10 direct jobs and 51.29 indirect jobs, and \$190,175.45 in taxes paid by the company at the end of the five years of operations. However, the business plan does not provide sufficient details of the basis for these projections or adequately explain how this revenue and staffing targets will be realized. The preponderance of the evidence standard requires that the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *See Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the

quantity of evidence alone but by its quality. *See id.* Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *See id.* Here, lack of supporting details detracts from the credibility and probative value of the business plan. Moreover, even if all the projections in the business plan were realized, the record lacks sufficient evidence demonstrating that the Petitioner's business will have an impact on the gym, health, and fitness clubs industry, the martial arts studios industry, the field of health and fitness, or the U.S. economy at a level commensurate with national importance.

Furthermore, the Petitioner has not offered sufficient evidence that her company will employ a significant population of workers in an economically depressed area or that the proposed endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. The Petitioner claims that his company's headquarters will be located in [REDACTED] Georgia, an economically depressed area due to a high unemployment rate. However, the Petitioner has not sufficiently demonstrated how the creation of 10 jobs by the company would constitute employment of a significant population of workers in the city or that the creation of these jobs would offer the city or its population a substantial economic benefit through employment levels.

In addition, while the Petitioner claims that the positive economic impacts of his business also come from the generation of economic alternatives for various economic areas through the stimulation of bilateral trade between Brazil and the United States, which will generate large economic and social dividends, the Petitioner has not sufficiently demonstrated how his proposed endeavors to establish a gym and martial arts studio will stimulate bilateral trade between Brazil and the United States and how these activities will generate large economic and social dividends.

Lastly, while the Petitioner claims that his company will generate \$3,871,120.32 in total revenue at the end of the five years of operations, the Petitioner has not demonstrated that this revenue stands to substantially affect economic activity regionally or nationally. The Petitioner has not otherwise provided sufficient information and evidence to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance. Accordingly, the record does not sufficiently demonstrate that the Petitioner's proposed endeavor is of national importance, and the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. We will reserve these issues for future consideration should the need arise.<sup>3</sup>

### III. CONCLUSION

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<sup>3</sup> *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 alternate issues on appeal where an applicant is otherwise ineligible).

Although the Petitioner has shown that he is a member of the professions holding an advanced degree and that his proposed endeavor to work in the United States as an entrepreneur in the gym, health, and fitness clubs industry and in the martial arts studios industry has substantial merit, he has not shown by a preponderance of the evidence that his proposed endeavor has national importance. Accordingly, the Petitioner has not established by a preponderance of the evidence that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.