



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 26399961

Date: JULY 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an elementary school teacher, 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). 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. The Director concluded that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate her eligibility for the requested 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 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.<sup>1</sup> 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest."

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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.

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 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 proposes to work in the United States as a third grade elementary school teacher. She earned a diploma specializing in early childhood education from [REDACTED] in Brazil and has worked and volunteered as a teacher. The Director determined that the Petitioner established her eligibility as a member of the professions holding an advanced degree, however, she did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

### A. Member of Professions Holding an Advanced Degree

The Director concluded that the Petitioner qualifies for classification as a professional holding an advanced degree based on her submission of her diploma, academic transcript, and an academic evaluation showing she earned the foreign equivalent of a U.S. baccalaureate degree, as well letters from her former employers showing she has more than five years of progressive post-baccalaureate experience in the specialty. See 8 C.F.R. § 204.5(k)(3)(i)(B). However, after review of the record, we disagree.

The diploma, transcripts, and academic evaluation demonstrate the Petitioner earned the foreign equivalent of a U.S. baccalaureate degree. The diploma and academic transcripts state that the Petitioner entered the licensure program in 2004, completed her studies in December 2007, and earned her degree in February 2008. The Petitioner also submitted an academic evaluation of her diploma and coursework stating the Petitioner “completed four years of specialized courses” in her area of specialty having the academic equivalent in the United States of a bachelor’s degree in early childhood education.

The Petitioner submitted letters relating to her work experience as a teacher, however, the employment letters do not demonstrate by a preponderance of the evidence that the Petitioner has five years of progressive post-baccalaureate experience. Each of the letters is in a foreign language accompanied by English translations. However, comparisons of the foreign language documents with their corresponding English translations show inconsistencies between them. Information in the foreign language documents contradict or not include information stated in the English translations.

For instance, the English translation of a letter from [REDACTED] states in its second paragraph that [REDACTED] hired the Petitioner as a full-time teacher on January 5, 2008.

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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).

Whereas the foreign language document only references the year 2007. Also, the first sentence of the fifth paragraph of the English translation states, “During the period of January 5, 2008, to December 30, 2008, [the Petitioner] was always zealous, dedicated, and serious”, whereas the foreign language document does not appear to refer to any dates. In comparing the documents, it is unclear whether the Petitioner was a full-time teacher for [redacted] in 2008 after she earned her degree in February 2008, or if the Petitioner earned this experience in 2007 while she was obtaining her degree. If the Petitioner’s experience was prior to her earning her degree, it would not qualify to count under the regulations towards her five years of post-baccalaureate experience. See 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner submitted two foreign language letters from her employer, [redacted] in which the bodies of the letters do not reference the Petitioner’s job title, her responsibilities, or her dates of employment, and only speak to her qualities and provide their recommendation. However, after the signature lines for each letter, the English translation includes additional language that is not included in the foreign language letter, “[The Petitioner] worked for us from 01/09/2016 to 12/20/2016 as a full-time teacher.” These unresolved inconsistencies in the record cast doubt on the credibility of the documents submitted. The Petitioner must resolve the inconsistencies with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Petitioner submitted additional foreign language letters with inconsistencies between the foreign language documents and the corresponding English translations. With respect to her work with [redacted] a letter from [redacted] states in the first sentence of the English translation, “It is an honor to recommend [the Petitioner] for her excellent job from January 12, 2009 to February 13, 2012 as a full-time teacher . . . .” Whereas the foreign language document at the same paragraph refers to the years 2008 and 2011. There are further date discrepancies when comparing the letters; specifically, the dates in paragraphs three and four state different dates. Similarly, a letter from [redacted] provides dates in its English translation that differ from dates indicated in the foreign language document. The English translation indicates the Petitioner worked at [redacted] “from May 12, 2012 to December 27, 2016” whereas the foreign language document states, “2012 a 2015.”

The record does not resolve the work experience letters’ directly conflicting information when comparing the foreign language letters with their corresponding English translations. Because the foreign language letters and their English translations present directly conflicting statements regarding the Petitioner’s work experience dates, responsibilities, and being full-time, and because the referenced information is material to threshold eligibility criteria, the letters’ veracity is questionable, they bear minimal probative value, and furthermore they cast doubt on the reliability and sufficiency of evidence in the record in general. See Matter of Ho, 19 I&N Dec. at 591-92 (BIA 1988). Therefore, the record does establish by a preponderance of the evidence that the Petitioner has five years of progressive post-baccalaureate work experience.

Although the record demonstrates that the Petitioner holds at least the foreign equivalent of a U.S. bachelor’s degree, it does not establish, by a preponderance of the evidence, that the Petitioner has at least five years of progressive experience in the specialty, as required by the criterion at 8 C.F.R. § 204.5(k)(2).

Upon de novo review, the Petitioner has not established her eligibility for EB-2 classification. The Director's determination that she is eligible to be classified as a member of the professions possessing an advanced degree is withdrawn.

## B. Substantial Merit and National Importance

The first prong of the Dhanasar 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.<sup>3</sup> 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." *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director determined that while the Petitioner established that the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance as set forth under the first prong of the Dhanasar analytical framework. We agree, for the reasons explained below.

The Petitioner indicates in her personal statement that her proposed endeavor is to work as a third-grade teacher at the [REDACTED] New Jersey. She states her education and extensive experience "will contribute to the well-being and education of children in the [United States]." She explains that her "goal is to create specific programs so that each child can have a solid grasp of several concepts in math, language, arts, science, and social studies" and to have children "explore more complex topics that will require them to further analyze the material and acquire critical thinking skills, becoming more independent learners." She submitted a letter from the school stating their intent to employ the Petitioner as a third-grade teacher with a description of her prospective work responsibilities. We agree with the Director that the Petitioner's endeavor has substantial merit.

On appeal, the Petitioner contends that the Director did not apply the proper standard of proof, instead imposed a higher standard, and "erred in not considering the Petitioner's proposed endeavor to be of national importance, as well as in failing to consider the opinion of the industry expert . . . ." The Petitioner further argues that her proposed endeavor has national importance since it will have "a substantial positive effect on the United States by providing benefits to individuals, families, and society as a whole." The Petitioner emphasizes her previously submitted evidence demonstrates by a preponderance of the evidence that the Petitioner's proposed endeavor will "have national implications, substantial economic effects, and will broadly enhance societal welfare." Upon de novo review, we find the Petitioner did not demonstrate by a preponderance of the evidence that her endeavor satisfies the national importance element of Dhanasar's first prong.

To show the Petitioner's endeavor has national importance, her personal statement describes her intent to be a third-grade teacher, the duties she will perform as a classroom teacher, her work experience, and an explanation of global and U.S. teaching and early childhood education initiatives. While the Petitioner has clearly stated in her personal statement and in this appeal that her proposed endeavor is

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<sup>3</sup> See generally 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policymanual>.

to be a third-grade teacher at [REDACTED] her personal statement and appeal also reference her specializing in the areas of early childhood education and special education, arguing these are of national importance since they will help the development and learning of U.S. children. Her personal statement emphasizes the benefits of early childhood education, “Focusing resources on the first five years of life is essential to creating a learning and development system that meets the needs of young people and helps American businesses remain competitive in the 21st-century global economy.” The Petitioner also submitted articles and reports relating to childcare and the benefits of early childhood education. However, the Petitioner’s statements and supporting articles and reports relating to early childhood education are specific to pre-kindergarten aged children. Therefore, the relevance of these statements and supporting documents is unclear since the Petitioner has stated that her proposed endeavor is to be a third-grade elementary school teacher, not an early childhood educator.

The Petitioner’s personal statement also describes global and U.S. initiatives to promote early childhood education, education, and investments in families. She asserts that her “combined academic knowledge and several years of experience in education [sic] will help to fill country needs and recovery while furthering U.S. government goals related to social and economic recovery.” However, the Petitioner has not provided evidence to explain or demonstrate how her being a third-grade teacher who devises specific programs for her students and the school will impact her field of teaching more broadly to rise to the level of national importance.

On appeal, the Petitioner emphasizes letters of recommendation from her previous employers and parents of her previous students to argue that her proposed endeavor has national importance. The Petitioner’s recommendation letters only address her past accomplishments as a teacher impacting her workplaces and students, and do not address the national importance of her endeavor’s “potential prospective impact.” For instance, a letter from a parent of her previous student praises the Petitioner’s work with her autistic daughter. Further letters from her previous employers explain the Petitioner’s competence, dedication, and professionalism as a teacher, with some letters detailing programs she established for special needs students at their schools. This type of evidence relates to the second prong of the Dhanasar framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Matter of Dhanasar*, 26 I&N Dec. at 890. Under Dhanasar’s first prong, the issue is whether the specific endeavor that the Petitioner proposes to undertake has national importance.

We acknowledge that the Petitioner was a valuable teacher for her employers and to her students in the past, but the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of her proposed endeavor will rise to the level of national importance, rather than only impacting her employer and students. 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. Likewise, the Petitioner has not demonstrated that her work as a third-grade teacher at [REDACTED] will have national or global implications in the field of teaching.

The Petitioner also submitted an expert opinion from [REDACTED]  
[REDACTED] New York. The opinion, however, states that the Petitioner “will provide pedagogical support and other innovative strategies for students with developmental disabilities” and for children “who need specially designed instruction because of mental, physical,

emotional, or behavioral disabilities.” The opinion explains that special education teachers provide societal and economic benefits which are of national importance. However, the opinion is not in accord with the record since the Petitioner has not indicated an intention to be a special needs teacher. Instead, the Petitioner clearly indicates she proposes to be a third-grade teacher, and the letter from her intended employer details the Petitioner’s proposed duties as a third-grade teacher, none of which include her teaching special needs children. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. See *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm’r 1988).

The Petitioner highlighted the economic and societal importance of teaching by providing reports and articles focusing on the shortage of teachers; issues with childcare; and economic and societal benefits of early childhood education. While the reports and articles demonstrate the field of teaching and early childhood education are important, they do not necessarily establish the national importance of the Petitioner’s proposed endeavor. We agree with the Director that the Petitioner’s emphasis on the occupational shortage of early childhood education teachers “does not render the work of an individual teacher nationally important under the Dhanasar framework.” The articles and reports do not establish that the Petitioner’s work as a third-grade teacher will impact the broader field or otherwise have implications rising to the level of national importance. 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” and its potential prospective impact in the field. *Matter of Dhanasar*, 26 I&N Dec. at 889. Much of the Petitioner’s evidence relates to the importance of the early childhood education and teaching fields, rather than the national importance of a specific proposed endeavor. As noted by the Director, “the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process.”

Although the Petitioner may customize educational programs to meet individual student needs, this does not appear to have an impact extending beyond her students. The record does not suggest, for example, that the Petitioner’s teaching duties would meet the current demand for teachers, address the national teacher and early childhood education shortage, or otherwise operate on a scale rising to the level of national importance contemplated by *Dhanasar*. The record does not support that the Petitioner’s proposed work as a third-grade teacher at [REDACTED] to have wider implications in the field of teaching. While we agree that the field of teaching has significant merit, the evidence and arguments provided do not support a finding that the Petitioner’s specific proposed endeavor has national importance.

Upon de novo review, we agree with the Director’s determination that the Petitioner did not merit a discretionary waiver of the job offer requirement in the national interest.

Because the identified reasons for dismissal are dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the remaining arguments concerning eligibility under the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that “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 record does not establish that the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree, or that she has met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner is not eligible for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER:      The appeal is dismissed.