



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

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

In Re: 26578480

Date: JUL. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an educator who intends to provide educational consulting services in the United States, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, 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 merits, as a matter of discretion, a national interest waiver of the EB-2 classification's job offer requirement. 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 agree with the Director that the Petitioner did not demonstrate the required "national importance" of his proposed work. Accordingly, 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 defined, in relevant part, as any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. *See* 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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,¹ 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.²

II. ANALYSIS

A. EB-2 Immigrant Classification

As stated above, a petitioner must establish eligibility for the EB-2 classification in order to be eligible for a national interest waiver. Here, the Director's decision does not include a determination regarding the Petitioner's eligibility as either an advanced degree professional or an individual of exceptional ability. Because we agree with the Director's conclusion regarding the Petitioner's eligibility for a national interest waiver, as will be explained below, we reserve the issue of his eligibility for the underlying EB-2 immigrant classification.³

B. National Interest Waiver

1. Proposed Endeavor

The Petitioner submitted Form ETA 9089, Application for Permanent Employment Certification, dated January 2022. At part K, where asked to provide details regarding his employment, he indicated that since 2018 he has worked as the coordinator of [REDACTED] a business providing "[e]ducational [c]onsultancy to governments, universities, and institutions."

The Petitioner's initial evidence indicated he obtained a bachelor's degree in agricultural engineering in 1988 from the Universidad [REDACTED] in [REDACTED] Nicaragua, and a Master of Science in plant nutrition and soil fertility the following year from the [REDACTED] University of Agricultural Sciences. In a cover letter accompanying the petition, counsel for the Petitioner indicated he previously worked for [REDACTED] from 1983 until 2018 as a professor, researcher, rector, and dean of the faculty of distance learning and rural development.

The Petitioner did not identify his proposed occupation on the Form I-140, Immigrant Petition for Alien Workers. Within the initial submission, the Petitioner provided a "Letter of Intent" in which he provides:

The main objective of this application is to contribute to the Reduction of Student Dropout and Increase the Chances of Success for Those Who Graduate, through the Implementation of the Third Social Contract of Education in the United States of North

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).

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

America . . . focused on learning and not on teaching and . . . the use of new learning modalities and the application of artificial intelligence in neuroeducation and emotional intelligence to improve the quality of education, taking as reference the book EDUCATION 2050 “BUILDING TODAY, THE EDUCATION OF TOMORROW,” which has been presented by me . . . with the important participation of the outstanding and recognized members of the [redacted] Network of which I am part . . .

....

Among the objectives of my work plan I highlight the Creation of a Non-Governmental Non-Profit Organization: to promote the Third Social Contract of Education, and as part of it , synchronous and asynchronous training, and inclusion of teachers according to the priorities and plan agreed with educational institutions (attached Third Social Contract Implementation Plan).⁴

In a request for evidence (RFE), the Director observed that the Petitioner did not provide specific insight as to what he intends to do in the United States, and requested a detailed description of the proposed endeavor so that the Director could evaluate his request for a national interest waiver under the *Dhanasar* framework.

In response to the RFE, the Petitioner submitted an additional statement in which he indicates:

As founder and coordinator of the World Team of Educational Leaders [redacted], my proposal is that together with [redacted] I will work hand-in-hand with people and educational institutions from the United States and prestigious academics from different parts of the world, to contribute to the permanent process of improvement and transformation of education through the implementation of the Third Social Contract of Education.

He further indicates that his proposed endeavor “will contribute directly to generating economic benefits by increasing efficiency of the educational system and, therefore, reduce losses, the direct and indirect generation of jobs and opportunities, and the general welfare of society.”

2. 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Director concluded that the Petitioner established that his proposed endeavor has substantial merit. However, the Director concluded that the evidence did not demonstrate that the endeavor would have

⁴ Although the Letter of Intent indicated the attachment of a Third Social Contract Implementation Plan, this document was not in the record before us.

national importance, emphasizing that the Petitioner had not shown how his proposed endeavor would have broader implications within his field that would reach beyond clients utilizing his services, or that it would broadly enhance societal welfare at a level commensurate with national importance, consistent with *Dhanasar*. The Director further observed that the record did not demonstrate that the proposed endeavor has significant potential to employ U.S. workers, would impact an economically depressed area, or would have benefits to the regional or national economy that would reach the level of “substantial economic effects” contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner maintains that the Director did not give due regard to his Letter of Intent and additional statement; expert opinion letter; articles demonstrating the national importance of his proposed endeavor; and evidence of his professional experience and accomplishments. For the reasons provided below, we agree with the Director’s determination that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.⁵

The Petitioner’s initial evidence included articles from sources including *Federal Reserve Bank of St. Louis Review*, *World Education News and Reviews*, *University World News*, and *Georgetown University Center on Education and the Workforce* that address the economic and financial advantages associated with postsecondary degrees by birth decade, race and ethnicity; the importance of the U.S. education system as the second largest higher education system and the top destination for globally mobile students; the drop in the U.S. share of international students; and a need for core competencies commonly associated with STEM occupations. This evidence supports the Petitioner’s claim that his proposed endeavor is an area that has substantial merit, as he proposes to work in tandem with educators, schools, academicians, and government agencies to improve U.S. educational processes.

The national importance of implementing new learning modalities in U.S. educational processes is not in question. However, in determining national importance, the relevant inquiry 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. In *Dhanasar*, we further noted 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.” *Id.*

Based on the Petitioner’s Letter of Intent and additional statement, he has not shown how the educational consulting services he intends to provide to his clients would have broader implications in the educational field. As noted, he proposes to operate a consulting business that will offer educators, academicians, educational institutions, and government agencies instruction in “the use of new learning modalities and the application of artificial intelligence in neuroeducation and emotional intelligence to improve the quality of education,” using as a reference his 2020 work titled, [REDACTED]. 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.

⁵ While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

Here, we find the record similarly does not show that the Petitioner’s proposed consulting activities would sufficiently extend beyond his clientele to impact the educational field more broadly at a level commensurate with national importance. For instance, a letter dated 2022 and addressed to the Petitioner from the international program coordinator of The University [redacted] states that [redacted] came to light with an innovation to solve an educational problem . . . not only with the technology developed but with the right objectives and the implementation of the MOOC modality, aspects that increase a better result in the educational objectives.” Although the author praises the Petitioner as “one of the greatest innovators of our time, for being accurate and effective with your project,” this evidence does not sufficiently show that such benefits, either individually or cumulatively, would reach beyond clients utilizing his services to the level of national importance.

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. The Petitioner’s business plan, as contained in his Letter of Intent and additional statement, is very limited and does not include a marketing strategy, staffing, income, salary, or personnel projections, or other figures demonstrating that his specific proposed endeavor has significant potential to employ U.S. workers or that it has the potential to result in substantial economic effects.

In addition, the Petitioner has not offered any evidence identifying the area where his company will operate; that it is economically depressed; that his company would employ a significant population of workers in that area; or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Without this evidence, we cannot evaluate the proposed endeavor’s impact on job creation or its overall economic impact. As such, the Petitioner has not supported a claim that his proposed endeavor stands to sufficiently extend beyond his customers to impact the educational field at a level commensurate with national importance.

On appeal, the Petitioner emphasizes that the record shows that his endeavor will involve such activities for organizations in higher education as “to design new learning platforms . . . increasing access to education for a greater number of people throughout the United States.” He asserts that such “process improvement and platform design could be widely implemented and thereby have a greater impact than merely benefitting the clientele of his organization.” However, as discussed above, the record lacks sufficient evidence that the number of jobs created by his business, and the increased access to education that may benefit his clients, would be significant enough to establish his proposed endeavor’s national importance. Although the proposed endeavor may benefit the client companies that engage the Petitioner’s services, the record does not sufficiently show that such benefits, either individually or cumulatively, would rise to the level of national importance.

We have also considered evidence related to the Petitioner’s past research activities in his field. We observed in *Dhanasar* that endeavors related to research, pure science, and the furtherance of human knowledge may satisfy the first prong, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States. *Id.* at 889. The record reflects that the Petitioner authored a chapter titled [redacted] [redacted] in the 2017 book [redacted] which is available in approximately 21 U.S. university libraries. However, the record does not demonstrate that the Petitioner’s specific work was cited by others, has introduced advances or improved processes

in the educational field, or has otherwise influenced or impacted the Petitioner's field. While the record demonstrates the Petitioner's interest in improving educational processes and designing new learning platforms to keep pace with technological advancements, the Petitioner's own contributions to this valuable field of research are not sufficiently documented.

Moreover, in his personal statements and appellate brief, the Petitioner has placed considerable emphasis on his academic training in agricultural engineering and his professional experience in the educational field. The record also contains commendation letters from his former employer. While important, the Petitioner's expertise acquired through his academic and professional career primarily relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong. A determination regarding the claimed national importance of a specific proposed endeavor cannot be inferred based on the Petitioner's past accomplishments, just as it cannot be inferred based on general claims about the importance of a given field or industry.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from an evaluator at [REDACTED]. Much of the letter discusses the benefits of higher education as a key driver of "growth performance, prosperity, and competitiveness." In addition, the expert opinion letter states that according to the U.S. Bureau of Labor Statistics the overall employment of postsecondary teachers is projected grow 12 percent from 2020 to 2030. The author concludes that "the proposed endeavor will broadly enhance societal welfare" and "has significant potential to employ U.S. employees and other substantial positive economic effects." However, the author does not offer any analysis of the Petitioner's business plan; the specific proposed endeavor and its prospective substantial economic impact; or the broader implications of the proposed endeavor in the field of education.

We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

For the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Because the Petitioner has not established his proposed endeavor has national importance, he is not eligible for a national interest waiver under the *Dhanasar* analytical framework. Although the Director also concluded that the Petitioner had not established his eligibility under the third prong of the *Dhanasar* framework,

detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve those issues and will dismiss the appeal as a matter of discretion.⁶

III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that he has not established eligibility 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 alternative basis for denial.

ORDER: The appeal is dismissed.

⁶ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).