



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

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

In Re: 26375488

Date: JUN. 6, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a teacher, seeks second preference 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 EB-2 immigrant 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that 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.

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 (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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

¹ *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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 second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director determined that the Petitioner did not meet the first prong because her proposed endeavor has substantial merit, but not national importance.²

As the Director already determined that the Petitioner's proposed endeavor has substantial merit, we will only analyze whether the Petitioner's endeavor is of national importance. If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs. Upon de novo review, we find the Petitioner did not demonstrate that her endeavor satisfies the national importance element of *Dhanasar*'s first prong, as discussed below.

² The Director also found that the Petitioner met the second prong, being well-positioned to carry out her proposed endeavor, but not the third prong of *Dhanasar*.

The Petitioner contends on appeal that the Director erred by applying a stricter standard of review and failing to consider the evidence in totality, specifically the Petitioner's personal statement, letters of support, probative research, and three expert opinions, while adjudicating national importance of her proposed endeavor.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what she claims is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met her burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed individual documentation submitted by the Petitioner and weighed her entire evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

The Petitioner initially stated on Form I-140 that her proposed employment is "English, foreign language, and ESOL teacher" and her proposed endeavor is "to teach adults and children English and foreign languages." In response to the Director's request for evidence (RFE), the Petitioner submitted a personal statement in which she describes her career as a teacher and a linguist, explains her current position as an ESOL teacher and her instructional methods, and demonstrates her resolve to use her skills to the best of abilities to make difference for her students. The Petitioner's statement, however, does not provide any other details beyond her intention to continue working as an ESOL teacher at a local middle school.

In response to the Director's second RFE, the Petitioner submitted a revised personal statement and claimed that "her endeavor has implications for the overall field of language instruction." In *Dhanasar*, we stated that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Dhanasar*, 26 I&N Dec. at 890. However, the record does not contain any evidence showing that her specific teaching methods contribute to the field of language instruction overall. The Petitioner submitted a copy of her "SPARTA" language instruction book, but the record lacks evidence that other language instructors widely utilize this book regionally or nationally.

The Petitioner further stated that her teaching strategies incorporate various linguistics theories and concepts and submitted linguistic research paper written by other experts on use of cognate awareness and Wikipedia excerpts on language transfer methods and [redacted] contrastive rhetoric phenomenon. Yet the record does not contain evidence demonstrating that the Petitioner's use of the identified teaching strategies impacts the field in a way that rises to national importance.

The Petitioner also claims that "her endeavor helps the federal government reduce the spending with programs such as Title III" and "her endeavor enjoys the interest of various educational organization in the United States and internationally, including government funded organizations." However, the Petitioner does not offer corroborating evidence of how her specific teaching endeavor directly affects the federal government spending, or what other domestic or international organizations are interested in her instructional methods other than the school district where she is currently employed. The Petitioner must support her assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Instead, the record contains recommendation letters mostly from her co-workers and former students who discuss the Petitioner's knowledge, skills, and work experience as an ESOL teacher. However, these documents relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. *Id.* However, these recommendation letters do not address how her teaching endeavor at the local middle school rises to the level of national importance as contemplated by *Dhanasar*.

The Petitioner submitted many articles and industry reports on importance of teaching career and ESOL teachers, value of language diversity and multilingual skills, and articles broadly discussing talent shortage in the teaching field. Yet 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." *Id.* at 889. Hence, the Petitioner must demonstrate the national importance of her proposed teaching endeavor than the national importance of the teaching field in which she intends to work. Although we recognize the substantial merit and significant contributions of ESOL teachers, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

The Petitioner resubmits on appeal three expert opinion letters from [redacted] professor of education at [redacted] University; [redacted] professor of Spanish translation at [redacted] University; and [redacted]. These letters praise the Petitioner's career as an ESOL teacher and discuss the value of ESOL teachers as well as their overall impact on all future language learners. However, the expert opinions do not address specific impact of the Petitioner's proposed endeavor as an ESOL teacher or her specific instructional methods in the teaching field outside of the local school or the school district.

In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because the effects of his/her work are primarily limited to his/her school or district, we find that the Petitioner has not established her proposed endeavor in this case will sufficiently extend beyond her school and students to affect the regional or national economy more broadly. *Id.* at 893.

Furthermore, in *Dhanasar*, we 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.* at 889. We 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 contends that she teaches in the economically depressed area but falls short of demonstrating that her teaching endeavor will create economic benefits to the depressed area reaching the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* The Petitioner's claims linking her proposed endeavor of "helping students learn a second language faster and more efficiently" to raising those students' employment prospects and ultimately stimulating economic

growth with their employability are too attenuated to sufficiently show the proposed endeavor's impact at a level commensurate with national importance.

For these reasons, we conclude that the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework and thus, the Petitioner has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, further analysis of her eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.