



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

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

In Re: 27463744

Date: JUN. 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a former 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. 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.

The Director of the Texas Service Center denied the petition. The Director found the Petitioner eligible for the requested EB-2 visa category as an advanced degree professional, but concluded she did not establish that it would be in the national interest to grant her a discretionary waiver of the job offer and labor certification 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 her 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 discretion¹, 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 Director determined that the Petitioner established her eligibility as a member of the professions holding an advanced degree under 203(b)(2)(A) of the Act and the record supports this conclusion.²

Therefore, the sole issue on appeal is whether the Petitioner meets the requirements of the three prongs of the *Dhanasar* analytical framework and otherwise merits a national interest waiver as a matter of discretion. In denying the petition, the Director addressed all three prongs of the *Dhanasar* analytical framework and concluded that the Petitioner did not demonstrate that she meets any of them. On appeal, the Petitioner asserts that she established that a waiver of the job offer requirement would be in the national interest and contends that the Director did not objectively evaluate all the submitted evidence under the preponderance of the evidence standard.

For the reasons provided below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. Proposed Endeavor

The Petitioner did not identify her proposed occupation on the Form I-140, Immigrant Petition for Alien Worker, nor did she provide a personal statement or other evidence explaining the nature of her specific proposed endeavor with her initial submission. In a cover letter accompanying the petition, counsel for the Petitioner described her as “a professor and researcher in good standing who has more than 34 years of experience.”³ Counsel indicated that she will focus on “research and development of behavioral patterns to help in the detection and prevention of extreme violence by children and adolescents as an alternative to avoid stricter gun regulations.”

In a request for evidence (RFE), the Director observed that the Petitioner did provide specific insight as to what she intends to do in the United States and requested a detailed description of the proposed

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 The Petitioner submitted official academic records demonstrating that she completed a four-year undergraduate degree program in Venezuela leading to the title “*licenciado en artes*,” as well as a two-year graduate program in education leading to a “*título de magister*” degree. She also provided an evaluation from an academic credentials evaluator who determined that her Venezuelan graduate degree is the equivalent of a United States master’s degree in education.

³ The Petitioner’s curriculum vitae indicates that she worked as a contracted teacher and professor in the arts at the university level from 1996 until 2007 and as the head of the arts department at a pre-school and primary school from 2004 until 2007. She indicates she worked primarily as an actor and television producer prior to 1996. The Petitioner did not indicate that she had been employed between April 2007 and the filing of this petition in September 2020.

endeavor so that the Director could evaluate her request for a national interest waiver under the *Dhanasar* framework.

In response to the RFE, the Petitioner submitted her professional plan for her proposed consulting business [REDACTED] Florida. According to this plan, the business will operate in “the mental health counseling industry for educational institutions and parents.” It indicates that the company’s mission is to “[p]rovide help to educational institutions, parents and teachers in training or in service in order to prevent cases of violence, bullying and terror in schools.” The Petitioner states that her business will target educational institutions to provide them with “instruction on the interpretation of drawings, as a tool capable of detecting in time the existence of behavior anomalies in students, and thus, be able to refer them later to health professionals.” The professional plan also indicates that the Petitioner’s business will offer services to parents “using drawing as a means to detect the socio-emotional development of their children or adolescents, with the aim that they learn to connect better with their children.” The Petitioner states that the services offered will “make school safer places” and help parents “better know and relate to their children.”

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

The Director acknowledged the Petitioner’s submission of a professional plan, expert opinion letter, industry reports and articles, and recommendation letters as evidence in support of this prong and determined that the evidence was sufficient to establish the substantial merit of the proposed endeavor. However, the Director concluded that the evidence did not establish that the endeavor would have national importance, emphasizing that the Petitioner had not shown her endeavor’s potential for broader implications in the field of education or school counseling, that it would have substantial positive economic effects or would broadly enhance societal welfare, or that it has the significant potential to employ U.S. workers, consistent with *Dhanasar*.

The Petitioner’s initial evidence included articles and government publications from sources including the Office of Juvenile Justice and Delinquency Prevention, American Progress, Juvenile Justice Information Exchange, and the Children’s Defense Fund that discuss the impact of gun violence on children and adolescents in the United States. She subsequently supplemented the record with media reports addressing a shortage of school counselors and school psychologists despite an increasing need for such services. This evidence supports the Petitioner’s claim that her proposed endeavor is an area that has substantial merit, as she proposes to work in tandem with schools and parents to identify children at risk for antisocial behaviors and to refer them for mental health services.

The national importance of addressing children’s mental health needs and preventing violent crime against children 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.*

We agree with the Director’s determination that the Petitioner’s proposed activities have merit. But the Petitioner has not demonstrated that her proposed endeavor will have national implications in the educational counseling field or that it would otherwise broadly impact the field in which she intends to work. As noted, she proposes to operate a small consulting business that will offer teachers, other school staff, and parents’ instruction in using “drawing interpretation” as a preventative tool to assess the socio-emotional development of children, and to identify students who may show signs of engaging in anti-social behavior so that they can be referred for evaluation by mental health professionals.

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 find the record similarly does not show that the Petitioner’s proposed consulting activities would sufficiently extend beyond her clientele to impact the educational or school counseling field more broadly at a level commensurate with national importance. The submitted professional plan does not establish the anticipated scope of the company’s services in terms of projected clientele, indicate the company’s potential for growth, or explain how the preventative methods or processes attributed to the Petitioner would reach beyond those schools or parents who opt to use her company’s services.

We further 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. An expert opinion letter from an evaluator at [REDACTED] Educational Services states that the Petitioner “has created a process of therapeutic intervention based on art therapy” and emphasizes that international organizations have shown increasing interest in the emotional development of young children and methods of early intervention. In addition, counsel refers to the Petitioner as a “researcher in good standing” in this field. However, the record does not support a conclusion that she is or would be engaged in ongoing research activities, such that her work has the potential to impact the field through publications, conferences or other venues in which research is disseminated. Nor does the record establish that the Petitioner has already impacted her field through the “process of therapeutic intervention” referenced in the expert opinion letter.

The record reflects that the Petitioner’s master’s thesis was titled “Drawing as a means of expressing the socio-emotional development of the preschool child,” and that she delivered a few lectures related to this topic around the time she completed her master’s degree in 2006. However, the record does not demonstrate that her thesis research was published and cited by others, or that her therapeutic intervention based on art therapy has otherwise influenced or impacted her field. Further, the record, which includes the Petitioner’s detailed resume and letters from former employers and co-workers, does not substantiate that she has been employed in any capacity since leaving her last position in the educational field in 2007 or that she has conducted or published any subsequent research in the field. The record therefore does not demonstrate that the Petitioner’s specific work has introduced improved processes or advances in the educational or school counseling field. While the record demonstrates an interest in understanding the emotional development of children and devising methods of early

intervention, the Petitioner's own contributions to this valuable field of research are not sufficiently documented.

In *Dhanasar*, 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. Here, the Petitioner's professional plan for her consulting business includes a section titled “main members.” It identifies her as the company director, with three other staff assigned to the “training,” “consulting” and “administration and marketing” units, respectively. The Petitioner indicates that the company will hire one additional employee in accounting management/coordination “as income increases.” The professional plan also briefly outlines the company's pricing structure for three types of services. It does not contain, however, any staffing, income, salary, or tax payment projections or provide other figures demonstrating that her specific proposed endeavor has significant potential to employ U.S. workers or that it has the potential to result in substantial economic effects, either on a national or regional basis or in an economically depressed area.

On appeal, the Petitioner maintains that the record shows that her endeavor will “more likely than not create job opportunities within the field” and she emphasizes her plans to hire staff to conduct the general operations of the business. She also discusses the consulting field, noting that “the business model of consulting is similar to staffing wherein the objective is to effectively lower labor costs for clients.” However, as discussed above, the record lacks sufficient evidence that the number of jobs created by her business, and any reduced labor costs that may benefit her clients would be significant enough to establish her proposed endeavor's national importance. Although the Petitioner submitted media articles that discuss a shortage of school counselors and psychologists in the labor market, the record does not support a determination that the Petitioner's consulting business would alleviate this shortage. Despite indicating her intent to operate in the “mental health counseling” industry, the Petitioner does not purport to offer services that would replace the need for counselors and psychologists in the educational setting or indicate that she will hire persons trained as counselors or psychologists to provide the company's services.

The burden is on the Petitioner to establish that the economic effects of her proposed endeavor are “substantial.” She did not provide specific plans, projections of indirect economic benefits, or other sufficient evidence to explain how her specific company activities will have broader implications in the field that rise to the level of national importance or that the company's activities would impact the field beyond the company and its clients. As such, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of “substantial positive economic effects” as contemplated by *Dhanasar*.

For the foregoing reasons, the Petitioner has not established the national importance of her proposed endeavor. Because she does not meet the first prong of *Dhanasar*'s national interest waiver test, we need not consider whether she meets the two remaining prongs. *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). We will therefore reserve consideration of the remaining national interest criteria.

C. Missing Initial Evidence

Finally, although not addressed in the Director's final decision, we note the regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA 750B, Statement of Qualifications of Alien, in duplicate."⁴ The Petitioner has not provided this required initial evidence and for this additional reason, the petition cannot be approved. *See* 8 C.F.R. § 103.2(b)(8)(ii) (providing that USCIS in its discretion may deny a benefit request for lack of initial evidence).

III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion. In addition, the petition cannot be approved because the Petitioner did not submit all required initial evidence under 8 C.F.R. § 204.5(k)(4). 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.

⁴ Alternatively, USCIS will accept parts J, K, and L of Form ETA 9089, Application for Permanent Employment Certification. *See* 6 *USCIS Policy Manual* F.5(D), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.