



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

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

In Re: 27545031

Date: JUN. 15, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a residential advisor, seeks 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. 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for EB-2 classification as an advanced degree professional but that the record did not establish that a waiver of the job offer is 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, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither 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 a 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.

II. ANALYSIS

The Director found that the Petitioner established eligibility for EB-2 classification as an advanced degree professional based upon his master of public administration degree from the University of [REDACTED] which he obtained in 2015.² However, the Director found that the Petitioner did not establish eligibility under any of the three prongs of the *Dhanasar* analytical framework, and as such, did not establish that a waiver of the job offer requirement is in the national interest.

On the Form I-140 Petition, the Petitioner provided the proposed job title of “residential hall coordinator” with the SOC occupational code 39-9041, “Residential Advisors.” The Petitioner also submitted a job offer letter from the University [REDACTED] for employment as a “Hall Coordinator” within the Division of Student Life and stated that this was his position at the time of filing the petition. As to the proposed endeavor, the Petitioner initially stated that he endeavors “to assist in the development of college students academically, socially and emotionally” and that he proposes to “continue with his current work of helping college students enrich their educational experience, boost their chance of enjoying their college experience, and assisting those students interested in pursuing graduate degrees.” The Petitioner also stated that he has work involves crisis management on college campuses, such as responding to after-hours issues ranging from flooding to sexual assault and assisting with Title XI compliance and reporting.

In response to the Director’s request for evidence (RFE), the Petitioner submitted evidence that he accepted a new position as the director of residence life at [REDACTED] University in Louisiana. The Petitioner describes it as a newly created position tasked with developing a new “Office of Residence Life” at the university, and states that the position involves all aspects of administrative management for residence life at the university, including student wellness initiatives, emergency on-call services, and facilities management.

We note that a petitioner must establish eligibility at the time of filing the petition, and we generally will not consider events that arose after the filing of the petition. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971). The purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (b)(8), (b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform with USCIS requirements. See *Matter of*

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 also submitted a copy of his academic transcripts for his master of arts degree in public policy and international affairs from [REDACTED] University in [REDACTED] PA, completed in 2013, but did not provide a copy of his diploma. The Petitioner was also enrolled in a Ph.D. program in political science at [REDACTED] University at the time of filing the petition.

Izummi, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). The Petitioner's initial filing did not discuss this specific job opportunity, which appears to have arisen after the filing of the petition. Nevertheless, because the endeavor as articulated in response to the RFE—to establish and direct a new residential life department at a university—relates to the initially submitted evidence of providing university residential student services and continuing the Petitioner's "current work of helping college students enrich their educational experience," we will consider the Petitioner's proposed endeavor as articulated in the RFE response.

As to the first prong of the *Dhanasar* analytical framework, the Director found that the Petitioner did not establish either the substantial merit or the national importance of his proposed endeavor. Specifically, the Director stated the Petitioner did not provide a sufficiently detailed description of his proposed endeavor, and instead solely described the field in which the Petitioner intends to work. The Director stated that, without a sufficiently defined endeavor, the Petitioner had not established that his endeavor has substantial merit, and further that the evidence is insufficient to establish the potential prospective impact of the endeavor, and thus whether it has national importance.

On appeal, the Petitioner asserts that the Director did not fully analyze the evidence in the record in reaching this conclusion. The Petitioner contends that the evidence submitted in the RFE response specifically describes the Petitioner's proposed endeavor to build a university residence life office at [REDACTED] University, provides details about the job duties for the Petitioner as the director of this office, the need for this office, and the goals the Petitioner wishes to achieve through the creation of this office. The Petitioner asserts on appeal that this endeavor has substantial merit because the Petitioner seeks to increase the well-being of the student population and provide them the tools, skills, and support necessary to ensure a higher likelihood of graduation.

A petitioner may demonstrate their proposed endeavor's substantial merit "in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education." *Matter of Dhanasar*, 26 I&N Dec. at 889. Although we acknowledge the initially submitted evidence did not articulate a proposed endeavor other than that of continuing in his occupation, we conclude that there is sufficient evidence in the record regarding the Petitioner's plans to direct and establish this residential life office to analyze the endeavor's substantial merit and national importance. Moreover, based upon the Petitioner's statements regarding his proposed endeavor and the evidence in the record relating to the impact that quality residential life services can have on student success and well-being, we agree with the Petitioner that he has established the substantial merit of his proposed endeavor.

We withdraw the Director's finding that the proposed endeavor lacks substantial merit and conclude that the Petitioner has established this requirement.

We turn next to whether the Petitioner has established that the proposed endeavor has national importance. In making this determination, we consider the endeavor's potential prospective impact. *Id.* An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

On appeal, the Petitioner asserts that the proposed endeavor has the potential to have a substantial impact on the local economy. The Petitioner states that [REDACTED] Louisiana, the city in which [REDACTED] University is located, is an economically depressed area, and that both the city and the university have recently suffered significant damage from two major hurricanes in 2020, along with the effects of the COVID-19 pandemic. The Petitioner notes that the new Office of Residence Life will include 14 staff members and that the office may help the university attract a larger student body and thus have positive economic effects on the area. However, the Petitioner has not established that the creation of 14 jobs will result in the type of “substantial positive economic effects” that are required for national importance. *Matter of Dhanasar*, 26 I&N Dec. at 890. Additionally, we note that many, if not most, of these jobs appear to be part-time on-campus jobs intended for university students, rather than full-time permanent positions. The Petitioner also states that his role is the only full-time position anticipated. We conclude that the Petitioner’s claim that the new Office of Residence Life will have a broad impact on the economy such that it rises to the level of national importance is not supported by the evidence in the record.

The Petitioner also asserts that by ensuring student safety and well-being and providing students with support and tools to help them graduate, the proposed endeavor will have a broad impact by increasing graduation rates and thus leading to a better educated workforce. The Petitioner further contends on appeal that the endeavor has national importance because it has the potential to attract students from around the nation, based upon the university’s high quality of life. Finally, the Petitioner asserts that the potential to increase student enrollment and retention, and help provide students the tools to graduate, will enhance societal welfare and cultural and artistic enrichment based upon students studying these areas or engaging in them after graduation. Again, these claims are not supported by the evidence in the record. In determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the potential prospective impact of the “specific endeavor that the [noncitizen] proposes to undertake.” *See id.* at 889. The Petitioner states that [REDACTED] University has an enrollment of 5,882 students and houses approximately 900 students. While access to high quality residential student services may influence graduation rates and higher education overall, the Petitioner has not provided evidence that would support the conclusion that his specific proposed endeavor—to establish this office at [REDACTED] University—will increase graduation rates, enhance societal welfare, or increase cultural and artistic enrichment on a scale that would be commensurate with national importance.

Upon de novo review of the record, we agree with the Director that the evidence does not establish the national importance of the Petitioner’s proposed endeavor. Although the record reflects the Petitioner’s intention to provide valuable residential student services to the students at [REDACTED] University, the Petitioner has not offered sufficient information or evidence to establish that the prospective impact of his specific proposed endeavor rises to the level of national importance. In *Matter of Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of national importance because they would not extend beyond his students to impact the field more broadly. *Id.* at 893. Here, the same is true. The Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his university and its student population to impact the economy or the field of residential life student services at a level commensurate with national importance.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility under the first prong, we reserve our opinion regarding whether the record satisfies the remaining *Dhanasar* prongs. See *INS v. Bagamasbad*, 429 U.S. at 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").

III. CONCLUSION

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

ORDER: The appeal is dismissed.