



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

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

In Re: 23372902

Date: MAR. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a vocalist and music teacher, seeks classification as a member of the professions holding an advanced degree. *See* 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish either his eligibility for EB-2 classification or that a waiver of the job offer requirement 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.

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;

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).

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

As stated above, the Director concluded that the Petitioner did not establish his eligibility for EB-2 classification as a member of the professions holding an advanced degree. Specifically, the Director stated that the Petitioner's evidence was insufficient because he did not provide a detailed advisory evaluation of his foreign credential to establish that it is equivalent to an advanced degree in the United States. Upon review of the record, we acknowledge that the initial filing did include a credential evaluation, advising that the Petitioner has obtained the equivalent to a United States master's degree in business administration. Moreover, we conclude that this evidence, in combination with the Petitioner's academic documents in the record, is sufficient to establish that the Petitioner qualifies as an advanced degree professional. As such, we will withdraw the Director's conclusion that the Petitioner did not establish his eligibility for EB-2 classification.

Having determined that the Petitioner is eligible for the underlying EB-2 classification, we turn to the Petitioner's request for a national interest waiver of the job offer requirement. The Petitioner's proposed endeavor is to be a musical event manager and vocal teacher. The Director found that the Petitioner established his endeavor's substantial merit but not its national importance and, as such, did not establish eligibility under the first prong of the *Dhanasar* framework. Specifically, the Director stated that the Petitioner did not establish that his proposed endeavor had the potential to "broadly enhance cultural or artistic enrichment" and that the Petitioner's evidence of the cultural importance of the classical music field was insufficient because it did not demonstrate that his "particular proposed endeavor" is of national importance.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. 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 has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Id.* at 890.

On appeal, the Petitioner submits a brief and additional evidence in support of his request for a national interest waiver. The Petitioner's appeal brief restates the evidence in the record and his claim that he merits a waiver of the job offer requirement in the national interest. He points to the evidence in the record that he has authored scholarly articles, judged prestigious musical competitions, served in lead roles in professional musician organizations, and received media recognition for his work. The additional evidence on appeal includes articles about the popularity of classical music and the national music teacher shortage, information regarding the occupational category of music teacher, and evidence of a recent [REDACTED] concert performance at which the Petitioner was invited to sing.

We conclude that the evidence in the record does not establish the national importance of the Petitioner's proposed endeavor. The Petitioner's role in musical competitions, professional organizations, and his recognition in the media help establish that he is respected in the field of classical vocal performance and teaching. This evidence relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether he is well-positioned to advance it. *Matter of Dhanasar*, 26 I&N Dec. at 890. However, this evidence

does not establish that his proposed musical event management and teaching activities are of national importance. The Petitioner's appeal brief essentially repeats previous claims and does not establish error in the Director's decision. Moreover, the Petitioner's new evidence of music teacher occupational data and articles about classical music is substantially similar to the evidence already in the record and does not help establish the national importance of the Petitioner's proposed endeavor. Finally, we note that the Petitioner's inclusion at a [] concert performance occurred in 2022. Generally, we will not consider events that arose after the initial filing of the I-140 Petition.² A petitioner must establish eligibility at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved when a beneficiary, initially ineligible at the time of filing, becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45,49 (Reg'l Comm'r 1971).

In *Dhanasar* we concluded that STEM teaching has substantial merit in relation to U.S. educational interests, but that the petitioner had not demonstrated that the activities of one individual STEM teacher would impact the education field more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. The same is true here. The Petitioner has not established that the benefits of his proposed endeavor will extend beyond his own students or musical event attendees to impact the industry or field more broadly.

The Petitioner has not established that his proposed endeavor has national importance, as required by the first prong of the *Dhanasar* analytical framework. Because the Petitioner has not met the requisite first *Dhanasar* prong, we conclude that the Petitioner has not established that he is eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 the applicant is otherwise ineligible).

ORDER: The appeal is dismissed.

² The I-140 Petition was filed on September 29, 2020.