



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

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

In Re: 26387645

Date: MAY 3, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physical education instructor, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and 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. The Director determined that although the Petitioner qualifies for classification as a member of the professions holding an advanced degree, she did not establish 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.

After a petitioner first demonstrates qualification for the underlying EB-2 visa classification,¹ they must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner shows:

- 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.

¹An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

² 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 Director reviewed and analyzed the Petitioner's claims under the three prongs of *Dhanasar* and determined that she only established the substantial merit of her proposed endeavor, which is to operate and work in a physical and postural training company. For instance, in discussing the first prong, the Director acknowledged the Petitioner's submission of a business plan with five-year staffing and growth projections. However, the Director determined that the Petitioner did not substantiate the growth projections or demonstrate that her endeavor will impact the U.S. economy or the fitness and wellness industry. Further, despite recognizing the endeavor's potential to impact the clients it intends to serve, the Director found that the record contains no evidence demonstrating that the Petitioner's work offers original innovations that would contribute to advancements in the fitness and wellness industry. In sum, the Director concluded that the prospective impact of the proposed endeavor does not rise to the level of having national importance with broad implications in the Petitioner's field.

On appeal, the Petitioner attempts to address the Director's concerns by reiterating prior claims that emphasize the Petitioner's knowledge and experience, which she claims will "highly benefit" the U.S. population and will "reflect significantly" on the U.S. economy. However, the Petitioner does not provide any new evidence or arguments that overcome the Director's determination on any of the three prongs of the *Dhanasar* framework.

Upon review of the entire record, we adopt and affirm the Director's decision in its entirety with respect to all three prongs. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case.)

ORDER: The appeal is dismissed.