



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

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

In Re: 30164362

Date: APR. 25, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an artist, seeks second preference immigrant classification (EB-2) as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2) (2022). 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 record did not establish the Petitioner's qualification for a national interest waiver. The matter is now before us on appeal. 8 C.F.R. § 103.3 (2022).

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 immigrant 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.

"Exceptional ability" means a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(k)(2) (2022). An individual must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.<sup>1</sup> If a petitioner does demonstrate meeting at least three criteria, USCIS then conducts a final merits

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<sup>1</sup> USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally* 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

determination to decide whether the evidence in its totality shows that the individual is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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. *Matter of Dhanasar* states that USCIS may, as matter of discretion,<sup>2</sup> 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

*Matter of Dhanasar*, 26 I&N Dec. at 889-91.

## II. ANALYSIS

The Director determined that the Petitioner “does have a degree of expertise significantly above that ordinarily encountered in the . . . arts” and found “the [P]etitioner to be an individual of exceptional ability.” Notwithstanding this finding, the Director concluded that she did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

Upon de novo review, we agree with the Director’s finding, concluding that the Petitioner’s proposed endeavor does not satisfy the national importance element under *Matter of Dhanasar*’s first prong. If the Petitioner does not meet the first prong, the record is dispositive in finding that she is ineligible for the national interest waiver, and we need not address the second and third prongs under the *Matter of Dhanasar* framework.

As explained in the Director’s decision, the first prong – substantial merit and national importance – focuses on the specific endeavor that the foreign national proposes to undertake in the United States. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. We noted in *Matter of Dhanasar* 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 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.

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<sup>2</sup> See *Poursina v. USCIS*, 936 F. 3d 868, 870-76 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature); see also *Flores v. Garland*, 72 F. 4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

In an undated statement that the Petitioner submitted in support of the petition, the Petitioner stated that she is “in the field of Design” and she is “an experienced expert in utilizing artistic design to bring social attention to environmental issues.” When discussing her proposed endeavor in the United States, she indicated that she intends to engage in “artistic social activism,” “work in the artistic and cultural sphere of the United States,” and “focus [her] skills in art and design to generate awareness of the need for changes in environmental policy-making, to the benefit of the U.S economic and environmental health.” In a document entitled “EB-2 Professional Plan,” she discussed her 5-year plan and 10-year plan as a contemporary artist in the United States, noting that she aims for her art to “help to shift public opinion and drive awareness” and “affect public policy decision-making and contribute to the positive, sustainable development of the U.S. economy, thus creating a safer, cleaner, and more economically-efficient future.”

The Petitioner has offered other evidence in support of her petition, including recommendation letters from an associate professor of art at [redacted] discussing her artistic work and “her zeal to deliver greater awareness and appreciation of the natural world through her artwork”, and from a fellow at the [redacted] discussing her work that “draws attention to the need to preserve wild spaces and animals who call them home.” She has also submitted evidence relating to her employment as a graphic designer, her licensing agreement with an online platform, and her consignment agreement with an art gallery. Additionally, she has presented materials confirming the showing of her work online, in publications and in exhibitions. The “EB-2 Professional Plan” states that she is a member of the World Wildlife Fund (WWF) and donates money to organizations that address environmental and wildlife preservation concerns.

On appeal, the Petitioner maintains in her appellate brief that her “proposed endeavor holds significant national importance due to its holistic approach to addressing environmental issues through contemporary art, education, and community engagement.” She claims that her proposed endeavor will positively impact the U.S. economy because her art “us[es] recycled materials” and offers consumers “eco-friendly merchandise and products,” and because her “participation in exhibitions and collaborations . . . stimulates economic growth . . .” In addition, she alleges that her proposed endeavor will be “an economic driver,” because it will “create jobs, generate tax revenue, and revitalize struggling areas.”

The record is insufficient to demonstrate that the Petitioner’s proposed endeavor satisfies the first prong under *Matter of Dhanasar*. Specifically, the letters of recommendation and other supporting materials discuss the focus of Petitioner’s proposed endeavor, but they fail to establish how her proposed endeavor will likely impact the field of design nationally or how the potential prospective impact has national implications within the field. *See id.*, 26 I&N Dec. at 889. For example, the letter from an associate professor of art at [redacted] claims that her proposed endeavor “has a national and even a global impact,” but the letter supports the claim with a general discussion of contemporary art and its impact on society, without specifically explaining how the Petitioner’s proposed endeavor - using art to bring awareness to environmental and wildlife preservation issues - rises to the level of national importance or how it will likely impact the field of design more broadly. Also, the letter from a fellow at the [redacted] notes that the Petitioner’s art “explores themes of nature and ecofeminism,” but does not explain how her proposed endeavor has national importance. As discussed in the Director’s decision, the Petitioner has not established that her proposed endeavor “offers original innovations that contribute to advancements or otherwise

has broader implications for the field.” See *Matter of Dhanasar*, 26 I&N Dec. at 889-90. Additionally, while the Petitioner has entered into a licensing agreement with an online platform and has displayed her work publicly, the record does not support a finding that the level of public interest she has received confirms national importance of her proposed endeavor.

Similarly, while the Petitioner claims that her proposed endeavor is “an economic driver,” she has not included sufficient evidence showing the level of economic impact that her proposed endeavor will likely have, including information on the number of jobs it will likely create, the amount of tax revenue it will likely generate, how it will likely revitalize struggling areas, or where are the struggling areas that it will likely revitalize. For example, the letter from an associate professor of art at [REDACTED] states that the Petitioner’s “contemporary artist position has . . . economic effects for the society,” because “the annual wage for artists was \$49,960 in May 2021” and that the “employment multiplier figures for arts are very promising.” Even if we were to accept that the Petitioner’s proposed endeavor will likely have some economic impact, as it is the case with most employment, as noted in the Director’s decision, the Petitioner has not established that “her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States.” See *Matter of Dhanasar*, 26 I&N Dec. at 890.

We acknowledge that the Petitioner’s proposed endeavor involves bringing awareness to environmental and wildlife preservation issues through art. Even if we were to conclude that her proposed endeavor has substantial merit, merely working in an important area is insufficient to establish the national importance of the Petitioner’s specific proposed endeavor. The relevant question is not the importance of the area in which the individual will work; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” *Matter of Dhanasar*, 26 I&N Dec. at 889. In this case, for the reasons we have discussed, the Petitioner has not demonstrated the requisite national importance.

Accordingly, we find that the Petitioner has not satisfied the first prong of the *Matter of Dhanasar* framework, and she has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Matter of Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that “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).

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Matter of 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.