



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

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

MATTER OF M-L-M-

DATE: OCT. 5, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a special education teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief and argues that she is eligible for a national interest waiver as a "highly qualified teacher" working toward the "national priority goal of closing the achievement gap." In July 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*. In response, she provides further evidence and contends that she is eligible for a national interest waiver.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYS DOT*).

performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Petitioner received a master of arts degree in teaching from [REDACTED] in the Philippines in 2010. The record includes a U.S. educational equivalency evaluation stating that she holds the foreign equivalent of U.S. masters of arts in education with an emphasis in special education. Accordingly, the Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus the labor certification, is in the national interest according to the three-pronged analysis set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner proposes to continue her work as a special education teacher for [REDACTED] [REDACTED]. Since [REDACTED] 2007, the Petitioner has taught for [REDACTED] at the [REDACTED] in [REDACTED] Maryland. Her "Personal Statement" provided in response to our RFE reflects that she intends to continue working as a special educator at [REDACTED].

The Petitioner explains that [REDACTED] is "a regional school whose population consists of students diagnosed with severe and profound disabilit[ies]." She discusses her work as the school's elementary autism leader, collaborative projects with other educators, coordination of specialized work centers for students with autism, utilization of the station teaching model, professional development, student performance data collection, and preparation of progress reports. A letter of support from [REDACTED] a special education teacher at [REDACTED] indicates that the Petitioner's "educational expertise and dedication to teaching students with severe special needs continues to be a valuable asset to any public school in the United States." Furthermore, [REDACTED] an educator with [REDACTED] states: "Teachers like [the Petitioner] who work tirelessly and [have] dedicated themselves to helping students with special needs are hard to find and thus, should be valued." Lastly, [REDACTED] and two other [REDACTED] teachers, [REDACTED] and [REDACTED] note that the Petitioner has shared her instructional strategies (such as station teaching) with them.

The record includes further documents that demonstrate the substantial merit of the Petitioner's proposed endeavor. For example, her appellate submission contains a report entitled "[REDACTED]"

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

recommendation from colleagues, supervisors, and parents of her students, attesting to her teaching expertise and positive impact on student performance.

The references discuss the Petitioner's talent, dedication, and contributions to [REDACTED]. For example, [REDACTED] principal at [REDACTED] states that in addition to the Petitioner's duties as a special educator, she serves as a "Coordinator of Specialized Work Centers for Students with Autism" and "Elementary Autism Leader" at [REDACTED]. She further notes that the Petitioner has "demonstrated outstanding practices in collecting and utilizing data for program accountability and designing successful differentiation for students." In addition, [REDACTED] indicates that the Petitioner's "professional expertise with students with severe disabilities is demonstrated in the progress of her students. She exhibits great skills in planning and implementing goals/objectives that promote student skill acquisition." Furthermore, [REDACTED] a second grade special education teacher at [REDACTED] mentions that she visited the Petitioner's classroom and observed teaching strategies that she found to be very helpful with her own students.

The record demonstrates the Petitioner's qualifications as an experienced teacher, her ability to serve special needs students and foster their progress, and her instructional skills and professional knowledge as special educator. She has also offered teaching guidance to her colleagues and received praise for her work from numerous [REDACTED] staff. Accordingly, the Petitioner has provided evidence that she is well positioned to advance her proposed endeavor of teaching special needs students, and we find therefore that she satisfies the second prong of the *Dhanasar* framework.⁵

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that she is eligible for a waiver due to her teaching qualifications, favorable recommendations, and the impracticality of labor certification.⁶ However, as the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

⁵ While we find that the Petitioner is well positioned to support special need students at [REDACTED] the evidence is not sufficient to demonstrate that her past work has affected the special education field beyond [REDACTED] or that she has otherwise been integral to advancing novel teaching methodologies that have garnered significant interest in her field. Therefore, had the Petitioner met the first prong by demonstrating that her proposed endeavor has broader implications in the field (such as by influencing special education practices beyond her school district), the record does not show that her background and progress in this broader endeavor render her well positioned to advance it.

⁶ The Petitioner provides evidence that [REDACTED] was temporarily debarred from filing immigration petitions under section 212(n)(2)(C)(i) of the Act as a result of its violation of U.S. Department of Labor regulations. However, the debarment period concluded prior to the date this petition was filed, and the record does not include any evidence that [REDACTED] remains similarly constrained. Additionally, even if [REDACTED] remained precluded from filing a labor certification based on its violations of applicable regulations, this would not demonstrate that, on balance, it would be beneficial to the United States to waive the requirement of a labor certification.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of M-L-M-*, ID# 551702 (AAO Oct. 5, 2017)