



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

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

MATTER OF A-D-P-

DATE: DEC. 4, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an educator, 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 a 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 Texas 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 additional documentation and a brief, arguing 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 set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of 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 performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the

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) (*NYSDOT*).

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 record reflects that, at the time of filing, the Petitioner was employed as an elementary school teacher at [REDACTED] Maryland. Previously, the Petitioner worked for [REDACTED] as a special education resource teacher and elementary mathematics teacher from October 2005 until June 2011. The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

In Part 6 of the Form I-140, the Petitioner indicated that she intends to work as a "Special Education Instructional Coordinator." She proposes to "[c]oordinate educational contents and develop instructional methods for special education programs for various educational organizations." In addition, the Petitioner provided a December 2016 letter describing her future plans:

I am currently designing a new instructional model for language arts education. This is based on my insight into the nature of academic instruction from my expertise in both regular and special educations. It has been a long pattern that each area developed independently to each other. My suggestion is that two areas must communicate with and learn from each other to improve their instructional approaches. I am developing a model to facilitate the communication between two different education areas.

With respect to the first prong of the *Dhanasar* framework, the Director determined that the Petitioner's proposed work as a special education instructional coordinator had substantial merit, but found that she had not demonstrated her endeavor's national importance. For example, the Director noted that the Petitioner did not offer sufficient information regarding "how she would introduce" her instructional model or provide supporting evidence demonstrating that her proposed work will have broader implications in the field.

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

³ The Petitioner presented her "Master of Arts in Teaching (Special Education)" degree (June 2012) from [REDACTED] in the Philippines and an academic credentials evaluation indicating that the aforementioned degree is the foreign equivalent of "a Master of Education Degree with a concentration in Special Education from an accredited institution of higher education in the United States."

In her appeal brief, the Petitioner maintains that “her education model could significantly benefit the standard curriculum of the U.S. public education system for primary/secondary education.” She further contends that “her new model of instruction development can be used and beneficial in the majority of U.S. primary/secondary school organizations.” Her appellate submission includes photocopies of documents she previously submitted. For instance, the Petitioner offers her educational credentials, recommendation letters from colleagues⁴, employment verifications, and recognition certificates from various schools where she has taught.

To evaluate whether the Petitioner’s work satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. The relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor. *Id.*

In the present matter, the Petitioner has not sufficiently explained the nature of her endeavor to demonstrate its potential prospective implications. For instance, while she states that her methods “can be” used widely, she has not indicated whether she intends to introduce her educational model, coordinate learning content, or develop instructional methods for special education programs in her own classroom or school district, or whether she is proposing to implement or promote her project in some way on a larger scale within the field. Nor does the record include supporting evidence showing that her proposed work has broader implications for her field, as opposed to being limited to the students in a particular classroom or school district. While we acknowledge the merit of her project aimed at improving language arts instruction, the record does not show that the Petitioner’s proposed endeavor offers benefits that impact the field of education more broadly.⁵

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

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

⁴ These letters do not address her future plans or otherwise discuss how her proposed endeavor is of national importance.

⁵ In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

Matter of A-D-P-

ORDER: The appeal is dismissed.

Cite as *Matter of A-D-P-*, ID# 1810776 (AAO Dec. 4, 2018)