



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

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

MATTER OF M-L-

DATE: JUNE 13, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a judo athlete and coach, seeks second preference immigrant classification as an individual of exceptional ability, 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as an individual of exceptional ability, but that he 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 further evidence and a brief contending that he is eligible for a national interest waiver under the *Dhanasar* framework.

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 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

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*).

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 Director found that the Petitioner qualifies as an individual of exceptional ability.³ The remaining 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.

With respect to his proposed endeavor, the Petitioner indicated that he intends to continue his “work in the field of martial arts in the U.S. as an athlete and a coach.” He further stated that his proposed work “will substantially benefit the United States by way of increasing our athletic competitiveness on the national and international level.”

In addition, the record includes letters of support from various [redacted] judo experts asserting that the Petitioner’s proposed work “will substantially benefit the United States.”⁴ For example, [redacted] a 2008 [redacted] medalist representing [redacted] asserted that the Petitioner’s proposed work stands to improve “the [redacted] Judo team’s athletic competitiveness in national and international tournaments” and “bring more people to participate in this traditional martial art, promoting a happier and healthier lifestyle for the U.S. public.” Similarly, [redacted] operator of [redacted] Judo-Sambo Club, contended that the Petitioner’s proposed work is aimed at “increasing the [redacted] Judo team’s athletic competitiveness and ultimately ensur[ing] the team’s success in future national and international Judo competitions. Furthermore, [the Petitioner] will continue to bring more people to partake in this traditional martial art, promoting a healthier and more active lifestyle for the U.S. public.”

The Director determined that the aforementioned letters and the information the Petitioner provided about his proposed endeavor were not sufficient to demonstrate its substantial merit or national importance. Specifically, the Director concluded that the Petitioner had not sufficiently described his plans for accomplishing his “goal of increasing U.S. competitiveness in the sport of judo.” In addition, the Director noted that while the record included statements claiming that the Petitioner will help improve the [redacted] Judo team’s competitiveness, the evidence did not show that the Petitioner has previously served “or will be working with the U.S. Judo team.”⁵ Furthermore, the Director stated that the Petitioner had not shown that his proposed endeavor offers broader implications, significant potential to employ U.S. workers, or substantial positive economic effects. Finally, the Director indicated that the record did not show that the Petitioner’s proposed endeavor will broadly advance societal welfare or cultural or artistic enrichment.

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

³ The record adequately demonstrates that the Petitioner meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and that he has achieved the level of expertise required for exceptional ability classification. He therefore has established eligibility for the underlying EB-2 visa classification.

⁴ While we discuss a sampling of these letters, we have reviewed and considered each one. The majority of these letters do not include an address, a telephone number, or any other information through which the individuals can be contacted.

⁵ The record does not demonstrate that the Petitioner has any connections with or invitations from the [redacted] Judo team to help improve its competitive performance in future tournaments.

On appeal, the Petitioner provides a list of six judo tournaments in which he intends to compete in the United States. He maintains that his proposed endeavor has substantial merit and national importance, stating:

[The Petitioner] has established that he is capable of winning major competitions in Judo in the U.S. and that he has in fact competed in and won such competitions in the U.S. The benefit resulting from winning such competitions will clearly help the U.S. Judo team's competitiveness, even if he will not be working with a U.S. Judo team, simply by motivating U.S. Judo team athletes to outperform [the Petitioner]. As [the Petitioner] is willing to coach other athletes, he will be sharing his expertise with those who aspire to compete with him and thus will improve their skills. . . . [H]is level of expertise allows to make a reasonable projection of the nationwide interest in his coaching services Major, national level athletic victories, such as those demonstrated by [the Petitioner], by definition, have national merit and importance that benefit the society in general

The Petitioner's claims regarding his record of success in athletic competitions relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national."⁶ *Id.* at 890. Nonetheless, while the record adequately shows the substantial merit of the Petitioner's proposed work, for the reasons discussed below, the evidence is not sufficient to demonstrate the national importance of the competitive and coaching endeavors he proposes to undertake.

In determining national importance, the relevant question is not the importance of the industry 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 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner contends that his participation in athletic competitions will motivate U.S. Judo team athletes to outperform him, he has not offered sufficient information and evidence to demonstrate that his involvement as a competitor stands to impact USA Judo, the [redacted] team, or his sport a level consistent with having national importance. Nor has he shown that his proposed U.S. coaching work is at a level that would offer national implications for his sport, or that the implications of such work stand to impact the sport more broadly, as opposed to being limited to his judo students. Likewise, in *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having

⁶ The record indicates that the Petitioner has participated in [redacted] in 2014, 2015, and 2016 for competitors over the age of 30 and placed as high as fifth. In addition, the Petitioner placed second in the [redacted] in [redacted] 2018, but this competition post-dated the filing of the petition. Eligibility must be established at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

national importance because they would not impact his field more broadly. *Id.* at 893. The Petitioner's proposed work therefore does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his 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 his 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 he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-L-*, ID# 3625723 (AAO June 13, 2019)