



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

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

MATTER OF J-K-S-

DATE: MAY 29, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a public administration and policy professor, 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 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 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 a brief asserting 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 a member of the professions holding an advanced degree. 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.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he “intends to work as a Public Administration and Policy Professor” and that his “public policy contributions should usher in tremendous municipal improvements” and improve “the welfare of the local residents within the United States.” He further explained that his proposed work “would focus on monetary and human resource assistance to further the humanitarian and social/public welfare causes within the United States, initially in the county of [REDACTED] in the state of California.”

The record includes a project plan stating that the Petitioner seeks to establish a non-profit organization called [REDACTED] in [REDACTED] to promote projects related to that region. This plan indicated that the [REDACTED] intends to “serve the people of [REDACTED] who need economic help, people with disabilities, and people who have lack of social communication.” In addition, his plan listed the [REDACTED]’s proposed “major projects” as follows:

- [REDACTED] Studies as regional studies
 - Service and support for the disabled people in the region
 - Retraining of vocational rehabilitation for the young unemployed people
 - Language training for international students
- * Establishment of study agent for international students

The Petitioner’s plan further stated that [REDACTED] “will start up the organization with two employees, an [sic] full-time employee and an [sic] part-time employee. After one year, we will hire two more employees.... As business grows in the future, we will plan to expand our office and hire more employees accordingly.” Additionally, the [REDACTED] project plan indicated that the Petitioner is “an adviser and consultant for [REDACTED] a rehabilitation and assistive technology company in Korea, and that he intends to support [REDACTED]’s plans to establish U.S. branch office.” Furthermore, the plan noted that [REDACTED] proposed “to invest a total of 450 thousand dollars for the operation for 3 years” and employ a staff of two in year one, three in year two, and four in year three.

The record contains articles about [REDACTED] economic problems, the county’s partnership with [REDACTED] Unified School District to meet workforce needs, and U.S. social welfare programs. For instance, the Petitioner provided a [REDACTED] 2015 article in the *Los Angeles Times*, entitled “[REDACTED]” identifying that city as the poorest of its size in California

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

and discussing its economic problems. In addition, the record includes a [redacted] 2017 article in *Orange County Register* entitled [redacted]. This article noted that the cities of [redacted] and [redacted] [redacted] “had the smallest slice of top rung-earners” and that more than half of their residents earned “less than \$50,000 per year.” The article further indicated that [redacted] had “double digit unemployment in 2016 . . . at 13 percent.”

With respect to the national importance of his proposed endeavor, the Petitioner asserted that his work is aimed at “achieving sustainable economic growth” in [redacted] an “economically depressed region.” He claimed that his undertaking “would facilitate the increase of employment rate and sustainable economic growth of the communities, which would lead to national economic stability in the long run.”

The Director determined that the aforementioned articles and the information the Petitioner provided about his proposed endeavor were not sufficient to demonstrate its national importance. Specifically, the Director concluded 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. In addition, 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.

On appeal, the Petitioner maintains that his proposed plan to establish [redacted] and “revitalize the poverty-stricken California’s [redacted] region” is of national importance. He contends that his undertaking focuses on “increasing the rate of U.S. employment and providing vocational education in the region.” While the record 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 any particular community education, disability support, vocational rehabilitation, or language training projects he proposed through his establishment of [redacted].

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’s statements and [redacted] project plan reflect his intention to educate the students and residents of [redacted] about their community, provide services for people with low incomes and disabilities, and offer vocational training and English language courses, he has not offered sufficient information and evidence to illustrate the number of individuals his business plans to train and support or to demonstrate that it stands to impact these populations at a level consistent with having national importance. Nor has he shown that his particular work would have broader implications for the fields of public administration or public policy.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the region or nation. While the appeal brief mentions past projects in which he participated and his plan's focus on increasing the rate of U.S. employment, the record does not include sufficient information or evidence regarding any projected U.S. economic impact or significant job creation attributable to his proposed organization.³ The record does not show that benefits to the regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Finally, with regard to the Petitioner's teaching duties as a public administration and policy professor, while these endeavors have substantial merit, the record does not establish that such work would impact the field of education more broadly, as opposed to being limited to his students. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner's teaching duties as a professor do not meet the "national importance" element of the first prong of the *Dhanasar* framework. Likewise, 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. The Petitioner's proposed work therefore does not meet the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

In addition, for the reasons discussed below, the Petitioner has not demonstrated that he meets the second prong of the *Dhanasar* framework. The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his academic credentials, employment records, memberships, professional appointments, published articles, and two "Best Professor" awards from [redacted] University [redacted].⁴ He also offered evidence of funding grants that his projects received in Korea and letters discussing his work as a professor, [redacted] planner, and social welfare advocate. Upon review of this evidence, the Director concluded it did not establish that the Petitioner is well positioned to advance his proposed endeavor.

On appeal, the Petitioner states that he "has been putting a great amount of efforts to engage [redacted] State University, [redacted] for diverse international exchange programs." The record includes a March 2018 letter from [redacted] International Outreach and Recruitment Specialist, [redacted] State University, [redacted] stating that the university "has been pursuing to enter into a partnership arrangement with [redacted] University to start a student exchange program where [the Petitioner] has been acting on behalf of [redacted] University."⁵ [redacted] further indicated that he would

³ For example, the Petitioner has not demonstrated that the staffing levels proposed in his project plan represent a significant improvement in the employment rate for [redacted] or the United States.

⁴ The Petitioner has worked as a professor of public policy, public administration, and social welfare at [redacted] from March 2000 until present.

⁵ The Petitioner also provided a March 2018 email from [redacted] indicating that this exchange program involves [redacted] accepting a group of 20 students from [redacted] to participate in an "Executive Assistant Certificate course." The evidence, however, does not show that the exchange program advances any of the Petitioner's project plan's stated goals of educating the students and residents of [redacted] about their community, providing services for county residents with low incomes and disabilities, or offering vocational training and English language courses to county residents.

“pursue future collaboration with [the Petitioner’s] non-profit organization to further develop any educational partnership opportunities for many aspiring students and adults with the community,” but he does not further explain the nature or extent of any proposed collaboration, nor does the record show that this letter from [redacted] reflects a level of interest in the Petitioner’s work among stakeholders in [redacted] that renders him well positioned to advance his proposed endeavor.⁶

With regard to his past work in the field, the record shows that the Petitioner initiated a study of [redacted] in Korea and created a course of study adopted by colleges and schools in that area. However, he has not documented the extent of impact on the region or otherwise demonstrated that this work constitutes a record of success sufficient to demonstrate that he is well positioned to advance his proposed U.S. endeavor. The Petitioner has not shown that his work has served as an impetus for progress in the field or that it has generated substantial positive discourse in the broader academic community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in public administration or public policy. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

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 he is eligible for a waiver due to his proposed endeavor’s “alignment with [redacted]’s recent joint effort with [redacted] Unified School District to initiate and support internship, apprenticeship and job shadowing programs” and his “past achievements as a true benefactor, organizer and administrator.” However, as the Petitioner has not established that he meets the first and second prongs of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in 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.

⁶ For example, the record does not include evidence of interest from relevant parties such as the [redacted] Government, [redacted] Transitional Assistance Department, [redacted] Unified School District, or [redacted] Superintendent of Schools.

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ORDER: The appeal is dismissed.

Cite as *Matter of J-K-S-*, ID# 3325952 (AAO May 29, 2019)