



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

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

In Re: 15896144

Date: AUG. 11, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a taekwondo 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).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability.

On appeal, the Petitioner submits a brief asserting that he is eligible for exceptional ability classification and a national interest waiver.

In these 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. 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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: “*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, 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 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>1</sup>, 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.<sup>2</sup>

## II. ANALYSIS

### A. Exceptional Ability

The Petitioner asserted that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. In denying the petition, the Director determined that the Petitioner fulfilled only the license to practice the profession criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C).

In the appeal brief, the Petitioner claims that he also meets the ten years of full-time experience criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), the membership criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E), and the recognition for achievements criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), but he does not specifically identify any erroneous conclusion of law or statement of fact relating to the Director’s determinations

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<sup>1</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

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

for these criteria.<sup>3</sup> Nor does the appeal brief even reference the Director's discussion regarding the aforementioned criteria. Additionally, while the Petitioner asserts that "[b]ased on the evidence submitted," he has met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B) and (F), the Petitioner does not identify the evidence. Furthermore, with regard to the recognition for achievements criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), the appeal brief states: "Attached hereto please see additional evidence describing [the Petitioner's] achievements and providing specific examples of how [the Petitioner] is well positioned to advance his endeavor and confirming that [the Petitioner's] work has influenced his field of endeavor." The appellate submission, however, was unaccompanied by additional evidence relating to his taekwondo achievements and work in his sport. Without offering specific arguments or evidence to overcome the Director's findings, the Petitioner has not established that he satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

## B. National Interest Waiver

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. The Petitioner argues on appeal that "USCIS should have found that [the Petitioner's] proposed endeavor will have potential national importance." For the reasons discussed below, we conclude the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that he intends to continue his career as a taekwondo athlete and coach. He asserted that he is a current member of USA Taekwondo and that he plans engage in his sport as both a competitor and a coach. The record includes two letters from [redacted] stating that the Petitioner has been working at [redacted] as "a member of our team of expert martial arts professionals."<sup>4</sup> [redacted]'s 8/4/2018 letter explained that the Petitioner's proposed work as an instructor for [redacted] involves "demonstrating proper taekwondo techniques," "sharing his extensive experience" in the sport, and "passing along his skills and abilities to the next generation." In addition, [redacted] noted that [redacted] "will continue to help [the Petitioner] further his skills and career" and "find competitions to participate in and have him represent our club." We agree with the Petitioner that his proposed work as taekwondo athlete and coach has substantial merit.

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<sup>3</sup> For example, regarding the ten years of full-time experience criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), the Director's decision discussed conflicting information relating to the Petitioner's "dates and places of employment" provided in the employment letters and on his Form ETA-750B and Form I-485 accompanying the petition. The Petitioner's appellate submission does not address or resolve these discrepancies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In addition, the record includes two letters from [redacted], head coach at [redacted], dated 8/4/2018 and 8/5/2020. [redacted]'s 2018 letter states that the Petitioner has been a member of [redacted]'s "team of expert martial arts professionals since March 2018," while his 2020 letter indicates that the Petitioner been with [redacted] "since March 2016." [redacted]'s second letter does not explain his reason for changing the date of the Petitioner's initial employment from March 2018 to March 2016.

<sup>4</sup> As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

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

On appeal, the Petitioner contends that his proposed work “will provide a significant national benefit by promoting sport of Taekwondo and training next generation of exceptional athletes.” He asserts that his undertaking stands to “have a broad impact in the U.S. beyond that of benefiting [the Petitioner] or his direct employers.”<sup>5</sup>

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. While the Petitioner’s documentation reflects his intention to compete and coach on behalf of [redacted] he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. For example, he has not demonstrated that his involvement as a competitor stands to impact USA Taekwondo, the U.S. national team, or his sport at a level consistent with having national importance. Nor has he shown that his proposed coaching work is at a level that would offer national implications for taekwondo instruction, or that the implications of such work stand to impact the sport more broadly. 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. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond [redacted] to impact the sport of taekwondo more broadly at a level commensurate with national importance.

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 our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s competing and coaching would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work 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.

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<sup>5</sup> The Petitioner also discusses his athletic and coaching accomplishments, but these claims regarding his past record of success in his sport relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890.

### III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude 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.

**ORDER:** The appeal is dismissed.