



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

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

In Re: 20009106

Date: DEC. 10, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a [redacted] coach, seeks second preference immigrant classification as a member of the professions holding an advanced degree and 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 Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification a member of the professions with an advanced degree or as an individual of exceptional ability, and that he had not 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 EB-2 visa 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.

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 discretion¹, 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.

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

¹ 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).

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 qualifies as a member of the professions holding an advanced degree.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. For the reasons discussed below, we agree with the Director that 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 to work in "the field of Physical Education, specifically within the [redacted]". He asserted that his proposed endeavor involves serving "as a [redacted] Coach and Trainer to individuals" and assisting "them in creating a new, healthier lifestyle." The Petitioner further stated that his undertaking is "dedicated, not just to training [redacted] and [redacted] artists and competitors but also to spreading his deep knowledge of [redacted] to the community, most specifically by training competitors, people with special needs, as well as training any individual on the [redacted] which focus on mind and body balance in a wide assessment of health problems, including obesity." He also claimed that his proposed work involving [redacted] stands "to have a positive impact on our nation's economy, societal health, and welfare."

The Petitioner provided a January 2021 letter from [redacted] owner of [redacted] a martial arts training academy in [redacted] stating that the Petitioner has been working at the facility as a [redacted] since November 2016.⁵ [redacted] indicated that the Petitioner's duties as a coach for [redacted] involve leading "group and individual [redacted] training sessions to improve athletic and technical skills," teaching [redacted] classes to both children and adults," training "athletes one-on-one to improve techniques," demonstrating "the proper effectuation of [redacted] moves," participating in competitive [redacted] events, modifying [redacted] moves to accommodate students with various experience levels," and serving "as a referee or judge for competitive [redacted] matches and showcase events." In addition, [redacted] noted that the Petitioner's work for [redacted] includes "counseling students on reaching their athletic aspirations," assisting "in organizing special events," identifying "areas for improvement in students' [redacted] performance," answering "questions on proper [redacted] techniques," serving "as a seminar guest or visiting instructor for other [redacted] training centers," formulating "individualized training schedules to prepare competitive athletes for [redacted] events," and teaching "competitors of

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

³ The Petitioner presented an official academic record showing that he has the foreign equivalent of a U.S. baccalaureate degree, and evidence in the form of letters from his employers showing that he has at least five years of progressive post-baccalaureate experience in the specialty. See 8 C.F.R. § 204.5(k)(3)(i)(B). He also provides information on appeal indicating that a four-year bachelor's degree is typically required for entry in his occupation. See 8 C.F.R. § 204.5(k)(2). [redacted]

⁵ 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.

[redacted] and [redacted] to incorporate [redacted] into their performances.” [redacted] further asserted that the Petitioner’s work is aimed at expanding [redacted]’s “clientele, benefiting both our training center, and the health of the new students who come to [redacted] Sports for his coaching. . . . [The Petitioner’s] work also raises the competitiveness of U.S. athletes, which gives our country greater and more prestigious representation in national and international events.”

The Petitioner also submitted letters of support from both his martial art students and their parents.⁶ For example, [redacted] a client at [redacted] stated: “In addition to teaching [redacted] as a stand-alone sport, [the Petitioner] teaches elements of [redacted] to improve the games of [redacted] and [redacted] athletes – maximizing the amount that he has to offer our country.” Likewise, [redacted] another [redacted] client, asserted that the Petitioner’s work involves training U.S. athletes to succeed in “popular and lucrative [redacted] events” and thus his proposed endeavor stands to “provide a huge advantage to our nation’s economy.” In addition [redacted] a client whose spouse and child train with the Petitioner as well, indicated that the Petitioner’s “training enabled our family to regain our health and make fitness a part of our lives. He trains us both individually and in groups, enabling us to strive toward our fitness goals affectively, while spending time together as a family.”

Furthermore, the record includes information about the value of the arts as contributors to the public realm, the benefits of [redacted] participation for children with special needs, cardiovascular responses in experienced practitioners of [redacted] and the role of expressive movement in attention-deficit/hyperactivity disorder and [redacted]. Additionally, the Petitioner provided articles discussing the history of [redacted] the artistic aspects of the [redacted] the economic costs of the U.S. obesity epidemic, the rise in obesity among U.S. adults, improvements in plantar pressure distribution among [redacted] participants, and [redacted] as a global cultural and educational lesson. He also submitted information about [redacted] interventions as a way to reduce anger in adolescents, balance improvement in children and teenagers who practiced [redacted] trends in obesity prevalence in U.S. youths and adults, the rise in obesity as a U.S. public health crisis, the social benefits of [redacted] and the ecological approach of [redacted] masters who work with people with disabilities. The record therefore supports the Director’s determination that the Petitioner’s proposed work as a [redacted] coach and trainer has substantial merit.

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 “despite the physical locations of [the Petitioner’s] [redacted] seminars, classes, and performances – evidence reflects that his work nonetheless has a national impact.”

⁶ While we discuss a sampling of these letters, we have reviewed and considered each one.

He presents a [redacted] 2020 article appearing in the theater program of the Inter-American Choreographic Institute's (IACI) production of "Men Who Dance" at the [redacted] Center for the Performing Arts' [redacted].⁷ This IACI promotional article describes the show as a "historic event" and states that "Men Who Dance brings together [redacted] Ballet, Dance NOW! [redacted] Cuban Classical Ballet, Dimensions Dance Theater of [redacted] Tango Out and others, including special guest Florida Grand Opera, in an epic tour-de-force." The Petitioner asserts that the article indicates "that the benefit of his impactful work expands beyond any number of students, workshop, or program attendees – expanding to his overall field," but he is not mentioned in the article. Nor is there information regarding the size of the audience who attended his performance.⁸

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 train clients and to promote [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 [redacted] coach stands to impact the martial arts or U.S. cultural interests at a level consistent with having national importance. Nor has he shown that his proposed endeavor as a [redacted] coach, trainer, and performer is at a level that would offer national implications for the [redacted] or that the implications of such work stand to impact his field 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] and its clientele to impact the [redacted] or societal health and welfare 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 [redacted] 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.

⁷ While the Petitioner provided seating information for the [redacted] Center's [redacted] the record includes a playbill indicating that the "Men Who Dance" production took place at the [redacted] Center's smaller [redacted]. The record also includes photographs of the Petitioner on stage, but no audience is visible in these photographs.

⁸ The Petitioner's claims regarding his past record of success in [redacted] exhibitions 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

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.