



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

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

In Re: 9822241

Date: JAN. 27, 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 systems engineer and project manager, 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).

The Director of the Nebraska Service Center denied the petition, concluding 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.

With the appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for 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).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², 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

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*).

² 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).

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.³

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.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, “[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate.”⁴ The Petitioner did not execute this required document for the petition, and therefore she has not properly applied for the national interest waiver. For this reason, the Petitioner has not established eligibility for the benefit sought. Furthermore, as outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

With regard to her proposed endeavor, the Petitioner initially indicated that she “seek[s] employment in Information Technology area as Director Project Management Office (PMO) Manager in government agencies or private companies.” In this capacity, she stated that she intended to “[d]efine and develop the strategic role of a PMO”; “[d]evelop and define the project management process, standards, deliverables and operational cadence necessary to ensure consistent project execution”; “[f]acilitate the prioritization and planning process both within departments and across the executive team to ensure clear, well communicated plans and progress is [*sic*] established organization wide”; “[e]stablish processes and tools for the regular tracking and reporting of progress on all projects and departmental efforts”; and “[c]omplete all responsibilities as outlined on an annual performance plan.”

The Director issued a request for evidence (RFE) asking the Petitioner to provide clarification as to “what type of endeavor [the Petitioner] plans to pursue in the United States.” She was informed that she should submit a “detailed description of the proposed endeavor and why it is of national importance.”

In response to the Director's RFE, the Petitioner asserted that she intended to pursue her “Project Ability” initiative which is aimed at having “students learn and demonstrate abilities and experiences in computer programming and project management in the real world.” She explained that the purpose of Project Ability is to “[t]each computer programming and project management to minority females and students with disabilities free of cost” and “[g]enerate knowledge and a community in which students are encouraged to seek equal opportunity for work and other future endeavors.” In addition, the Petitioner indicated that she planned “to provide mentorship, instruction and support” to students

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ Alternatively, USCIS will accept parts J, K, and L of Form ETA 9089, Application for Permanent Employment Certification.

by conducting code clubs, camps, and mentorship sessions. With respect to code clubs, the Petitioner stated that these after-school programming clubs offer “students the opportunity to learn in a social and safe environment.”

In her appeal brief, the Petitioner discusses her development of [redacted]’ an instructional program that seeks “to increase participation [redacted] in science, technology, engineering, and mathematics (STEM) fields in the United States.” The Petitioner states: “As Founder of [redacted] I can ensure more children, especially children with disabilities and girls, have an opportunity to experience and learn coding and project management. . . . The students I teach are interested in computer science or related fields.” She explains that [redacted] software applications to introduce the above-discussed subgroups of children and adults to software and technology in an inclusive learning environment through the use of interactive media projects (i.e. [redacted]).” The Petitioner further indicates that [redacted] currently holds in person instruction in [redacted] and has also begun virtual instruction to individuals across the United States in [redacted]”⁵ She also asserts that she has cultivated relationships with nonprofit organizations interested in having her host [redacted] sessions.⁶

The record includes various articles discussing the benefits of STEM education for [redacted] [redacted]. Furthermore, the Petitioner provided information relating to the effect of STEM education on financial security, student demographics in [redacted] creative computing, the Project Management Toolkit for Teachers®, the Promoting Women in Entrepreneurship Act, President Trump’s “Memorandum for STEM Education Funding,” the U.S. strategy for STEM education, and the state of computer science education in the United States. She also presented an article about the participation of [redacted] in science and engineering. The record therefore shows that the Petitioner’s proposed endeavor aimed at closing the diversity gap in STEM fields 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

⁵ The appellate submission includes ten letters from volunteers and parents in [redacted] [redacted], and [redacted] discussing their or their children’s involvement with [redacted]

⁶ The record includes letters from the office manager for [redacted] a nonprofit organization that assists women in [redacted], the executive director of [redacted] (an organization that provides business resources to underserved communities in the [redacted] area), and the manager of [redacted] (a child care center [redacted]) stating that their organizations accepted the Petitioner’s offer to host [redacted] sessions for their clients or students. In addition, the Petitioner provides a letter from a board member of [redacted] (a nonprofit organization that fosters self-sustainable communities in developing parts of the world) indicating that the organization “plans to set up one-on-one tutor sessions” through [redacted] to prepare “children for success in their educational and financial goals.”

economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

The Petitioner asserts on appeal that she is committed to expanding [redacted] in more states in the U.S. by recruiting investors, creating partnerships with nonprofits, and generating jobs as well.” She contends that her proposed endeavor stands to “further human knowledge” for [redacted]. In addition, the Petitioner argues that her undertaking offers a “significant economic impact” for the aforementioned groups. She further claims that her “endeavor has national importance by fulfilling congressional and presidential mandates.”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. In the present matter, the Petitioner’s evidence is insufficient to show that her proposed work has broader implications for her field, as opposed to being limited to the students who participate in her [redacted] sessions. While we acknowledge the merits of her work to create an inclusive learning environment and improve students’ STEM skills, the record does not demonstrate that the Petitioner’s instructional activities offer benefits that extend beyond her program to impact the educational field or U.S. economy more broadly at a level commensurate with national importance. 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. While the Petitioner asserts that her proposed work has implications that “extend beyond [redacted] . . . to impact not only the entire State [redacted] but the rest of the nation as a whole,” she has not demonstrated that her undertaking has implications beyond the students engaged in her program.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not shown that [redacted]’s future staffing levels and instructional activity stand to provide substantial economic benefits in [redacted] or the United States. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to [redacted] the record does not show that benefits to the U.S. regional or national economy resulting from her educational program 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 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 conclude that she has not established she 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.