



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 17586779

Date: SEP. 15, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, an athletic trainer, 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 Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as an individual of exceptional ability but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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. . . . the 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 a 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.

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 sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

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).

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. Although the Director found substantial merit in the proposed endeavor in the field of athletic training, the Director concluded that the record does not establish that the Petitioner's endeavor has national importance. The Director also concluded the record did not satisfy the second and third Dhanasar prongs. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner initially described the endeavor as a “plan . . . to work with healthcare facilities, sports teams, or fitness centers to provide expert advice to people who want to improve their physical health and athletic performance.” In response to the Director's request for evidence, the Petitioner revised the plan as follows:

[M]y overall proposed endeavor in the United States is to offer my expertise to continue my work as a [p]hysical [t]rainer here in the U.S., focusing on the implementation of an exercise-oriented conscience that will generate health and wellness in future and current generations of high-performance athletes who need to be in elite shape to accomplish their daily activities. I will make significant efforts to educate all clients and prospective clients about the benefits of regular exercise and a healthy lifestyle. I will do this through my company, [REDACTED]

The Petitioner also asserted that his company would “provide fitness and wellness-related services to individuals over 55, people with the need for physical therapy, and the general population” and “generate jobs within the economy by hiring several nutritionists, massage therapists, physical therapists, trainers, administrative assistants and cleaners.”

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that the record did not establish “that the [Petitioner's] work has or is likely to impact the field of athletic training more broadly.”

On appeal, the Petitioner summarizes his prior work experience. He also provides general information about the field of athletic training and nutritional recommendations. The Petitioner reiterates that the endeavor would “provide fitness and wellness-related services to individuals over 55, people with the need for physical therapy, and the general population, as well as individuals who have recovered from cancer.” On appeal, the Petitioner also provides more information about his company growth plan, asserting, “[b]y the end of Year 5, the Company will increase its total employee count to 11.”

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the foreign national proposes to undertake.” See Dhanasar, 26 I&N Dec.

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

at 889. Dhanasar provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

The Petitioner’s endeavor of providing athletic training benefits the Petitioner, as the owner and operator of his startup company, and his clients; however, the record does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner and his clients, as contemplated by the first Dhanasar prong. See Dhanasar, 26 I&N Dec. at 889. Petitioners bear the burden of articulating how they satisfy eligibility criteria. See section 291 of the Act, 8 U.S.C. § 1361. Although the Petitioner specifies that his endeavor would employ 11 workers within five years, the record does not establish the significance of employing 11 workers and how that may constitute a substantial positive economic effect. The Petitioner’s statements on appeal regarding his expertise and prior career accomplishments do not address how the proposed endeavor has broader implications beyond his clients. Moreover, the Petitioner’s focus on appeal on the importance of exercise and nutrition in general do not address aspects of the specific endeavor and how the performance of the planned activities under the endeavor would have broader implications, rising to the level of national importance as contemplated by Dhanasar. See *id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first Dhanasar prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third Dhanasar prong.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.