



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

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

In Re: 23101511

Date: DEC. 12, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an author, motivational speaker, leadership development teacher, and pastor, 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 Texas Service Center denied the petition, concluding that the Petitioner qualifies as a member of the professions holding an advanced degree, but that the record did not establish that a waiver of that visa classification's job offer requirement would be in the national interest. On appeal, the Petitioner submits a basis statement asserting that he merits a national interest waiver.

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. . . . [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 definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

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. *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the individual’s proposed endeavor has both substantial merit and national importance; (2) that the individual 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.¹

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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 individual. To determine whether they are 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

¹ To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, they must go beyond demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise to establish eligibility for a national interest waiver. See *Dhanasar*, 26 I&N Dec. at 886 n.3.

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 individual's qualifications or the proposed endeavor, it would be impractical either for them 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 individual's contributions; and whether the national interest in the individual'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 submitted diplomas showing that he earned a Bachelor of Science degree in Microbiology, a postgraduate diploma in education, and Master of Education degree in educational foundations, all from the University of C- in Nigeria. He also presented an undated letter from the same institution stating that he had completed coursework for a Ph.D. in educational psychology. The Petitioner did not submit official transcripts for these degrees, or an academic evaluation regarding their equivalency to U.S. degrees. Nevertheless, we reviewed the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. See generally American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, <https://www.aacrao.org/edge> (last visited Nov. 4, 2022). The database indicates that a master's degree from an institution in Nigeria is comparable to a master's degree in the United States. As the Petitioner has established that he qualifies as a member of the professions holding an advanced degree, the sole remaining issue is whether he merits a national interest waiver.

Describing his proposed endeavor, the Petitioner explained that he would conduct mentoring, coaching, writing, and motivational teaching activities in the area of leadership development. He stated that he would accomplish these activities by travelling across the United States on speaking engagements and special tours, partnering with relevant agencies and organizations, offering his services to educational institutions, and setting up a training academy.

A. Substantial Merit and National Importance

The Director concluded that the evidence was sufficient to establish the substantial merit of the Petitioner's proposed endeavor. We agree.

In his analysis of the national importance of this proposed endeavor, the Director compared these activities to the teaching activities of the petitioner in *Dhanasar*, which we found did not have a potentially broader impact on the field. He concluded that because the impact of these activities would

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

not extend beyond those being mentored, coached or taught, they would not have a national or broader effect on the field of leadership development.

On appeal, the Petitioner states only that the Director erred in his conclusion that his “work with youth, business, and other groups would not have broader impact beyond myself.” This is a misstatement of the Director’s decision, as he did not conclude that the Petitioner’s proposed endeavor would not impact others, but that it would not broadly affect the “self-help” field. The Director also noted that the record did not include evidence pertaining to the other potential national importance factors mentioned in *Dhanasar*, including substantial positive economic effects.³ Although the Petitioner briefly mentioned the establishment of a training academy in the United States as a part of his proposed endeavor, he did not provide sufficient explanation or supporting evidence to establish its prospective potential impact. We agree with the Director’s conclusion that the Petitioner has not established the national importance of his proposed endeavor.

B. Well Positioned to Advance the Endeavor

The second prong of the *Dhanasar* analysis focuses on the petitioner and includes a variety of factors to be considered in determining whether they are well-positioned to advance their endeavor. Here, the Director mainly focused on evidence regarding the Petitioner’s record of success in teaching, writing and speaking on leadership development, noting his submission of several reference letters from those who had attended his teachings and speaking engagements. But the Director also noted the lack of documentary evidence regarding these engagements and trainings, as well as the lack of documentation regarding H-S-C-C- in Nigeria, where the Petitioner serves as a founder and pastor.

In addition to these insufficiencies in the evidence regarding his previous achievements in the field of leadership development, we also note that despite the Petitioner’s claims to have written at least 20 books, the record includes what appears to be photographs of the covers for 4 of them. This evidence is not sufficient to support his claims or to show that his authorship constituted or contributed to a record of success in his field.

The Petitioner asserts on appeal that the Director wrongly concluded that he could not advance his endeavor because he has already shown that ability. While the evidence discussed above shows that he has conducted activities in the area of leadership development, it is not sufficient to show that he has a record of success in such endeavors. Further, only one of the non-exclusive factors listed in *Dhanasar* for consideration under the second prong focuses on prior experience in a field related to the proposed endeavors. Others include the existence of a model or plan for future activities, and the interest of investors, clients, and other relevant individuals or entities in the endeavor. Regarding the former, the Petitioner included a section of his letter in response to the Director’s notice of intent to deny labelled “Business Plan,” but this includes only slight expansions on the description of his proposed endeavor and an unsupported projection of the number of people he intends to reach. For the latter, the Petitioner relies upon the reference letters to show past interest in his work in Nigeria,

³ While the Director erred in considering evidence and factors in the first prong which should have been considered under the second prong of the *Dhanasar* framework, as this evidence concerned the Petitioner’s past accomplishments, this error was not material as he did not solely rely upon these in determining that the Petitioner’s proposed endeavor was not of national importance.

but provides insufficient evidence regarding his proposed work in the U.S. For the reasons discussed above, the Petitioner has not established that he is well positioned to advance his proposed endeavor.

III. CONCLUSION

The Petitioner has established his eligibility as a member of the professions holding an advanced degree, but has not shown that his proposed endeavor is of national importance or that he is well positioned to advance that endeavor. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. In addition, we note that the Petitioner does not challenge the Director's decision regarding the third prong on appeal. We will therefore consider this issue to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n. 2 (BIA 2009).

The Petitioner has not established he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.