



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

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

In Re: 23069369

Date: JAN. 18, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver)

The Petitioner, an athletic instructor and coach, seeks employment-based second preference (EB-2) 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 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 record did not establish that the Petitioner qualifies for (1) classification as a member of the professions holding an advanced degree, and (2) a national interest waiver. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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. Section 203(b)(2)(B)(i) of the Act. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is equivalent to a master's degree.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>1</sup>, grant a national interest waiver if the petitioner demonstrates that:

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<sup>1</sup> *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

## II. ADVANCED DEGREE PROFESSIONAL

The Director did not dispute that the Petitioner is a member of the professions, and that she holds a degree equivalent to a U.S. baccalaureate degree. But the Director determined that the Petitioner had not met her burden of proof to establish at least five years of progressive post-baccalaureate experience in the specialty, equivalent to a master's degree. While there are some gaps in the evidence submitted, we conclude that the record, as a whole, suffices to establish the required experience by a preponderance of the evidence. Even if the director has some doubt as to the truth, if a petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the petitioner has satisfied the standard of proof. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

## III. 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 Director determined that the Petitioner had established the substantial merit of her proposed endeavor, and that she is well-positioned to advance that endeavor. But the Director concluded that the Petitioner had not established the national importance of the proposed endeavor, or that, on balance, a waiver of the job offer requirement would be beneficial to the United States.

In 2004, the Petitioner earned a bachelor's degree in physical education from the [redacted] University of [redacted] Brazil. Since that time, she has worked for schools, clubs, and other entities, both as a swimming instructor and as a teacher in other athletic areas such as gymnastics or general physical education. The Petitioner entered the United States in September 2017 as an F-1 student.

The first prong of the *Dhanasar* national interest test, 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

When the Petitioner filed the petition in February 2019, she provided a very broad and general description of her proposed endeavor:

My focus is to continue my career as a Sports Coach and Instructor in the fields of Synchronized Swimming, Swimming, Water Gymnastics, Rhythmic Gymnastics, Dance & Classical Ballet and Physical Education in the United States, joining U.S. Elementary, Middle and/or High Schools, academies, clubs, sport leagues, corporations and institutions helping the population, principally children, to achieve better life quality and

influence the practice of physical activities as well as supporting the Sport and Fitness Industry.

. . . .

. . . I would also be an asset to companies, schools, academies, sport leagues and fitness clubs that intend to promote regular physical activity because, for maximal public health benefit, school physical education programs can prepare children for a lifetime of physical activity. Companies and education institutions would certainly benefit from my in-depth knowledge and I will be able to collaborate with other public health professionals in developing and evaluating school physical education programs that will improve the health of the nation's youth.

The Petitioner listed 20 job listings as examples of positions that she "intend[s] to pursue." Fourteen of these listings are for swimming coaches or instructors; five are for physical education teachers or fitness coaches; and one is for a junior gymnastics coach. The prospective employers include public and private schools, athletic clubs, and local government entities.

The Petitioner did not explain how employment in any of the positions described would have national importance. The Petitioner did not establish any readily evident benefit beyond a limited number of local students. Furthermore, the positions described are in several somewhat related but distinct occupations, and the Petitioner did not claim that she would work in all these occupations. *Dhanasar* requires the Petitioner to establish the national importance of "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. A stated intention to seek employment in a range of occupations is not a specific proposed endeavor.

The Petitioner submitted background information on a range of related topics such as the importance of physical fitness; drowning prevention; and the decline of U.S. performance in international synchronized swimming competition, but she did not explain how her work would address these issues at a nationally important level.

In a request for evidence, the Director stated that the Petitioner had not established that her "proposed work has broader implications for [her] field, as opposed to being limited to the students . . . [whom the Petitioner] intend[s] to instruct."

In response, the Petitioner stated that her "primary focus is [to] act as the owner and Swimming Coach and Instructor, operating her own business . . . [that] will cater to the needs of children, adults, and individuals with special needs." An accompanying business plan indicates that the new company "will provide swimming instruction for children and adults" and "develop its own teaching, learning, and practicing methodology in order to provide high-quality swimming coaching." The business plan also indicates that the company "will implement an adaptive program developed by [the Petitioner] specially designed to benefit children and adults with a range of special needs including autism, cerebral palsy, spina bifida, Down syndrome, sensory disorders, ADHD, and visual impairment." These aspects of the newly submitted plans in response to the request for evidence, like the Petitioner's original plans, involve a small group of students who would train under the Petitioner's direction or authority.

The Petitioner asserted that she “will establish a franchise business . . . in order to target the entire U.S.,” and “contribute to the overall U.S. economy by providing high-quality services, as well as generating tax revenue and creating new job openings. . . . By the end of Year 5 the Company will indirectly create at least 16 jobs.” The Petitioner did not establish that this level of expansion and employment constitutes “significant potential to employ U.S. workers or has other substantial positive economic effects” as contemplated in *Matter of Dhanasar*, 26 I&N Dec. at 890.

Furthermore, the Petitioner established the new company in [redacted] 2019 [redacted] after she filed the petition. When she first filed the petition, the Petitioner did not indicate that she would establish her own business. Rather, as discussed above, she stated an intention to find employment with a school, fitness club, or other institution. The program for swimmers with special needs also did not appear in the initial filing. At the time of filing, the Petitioner listed several possible job opportunities, some of which did not involve swimming at all. Rather, they involved other areas in which the Petitioner has some degree of experience, such as gymnastics.

A petitioner must meet all eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). Here, when the Director asked the Petitioner for more details about her proposed endeavor, the Petitioner responded by significantly changing the endeavor, rather than establish the national importance of the proposed endeavor as described at the time of filing.<sup>2</sup>

The Director denied the petition, stating that “the petitioner has not shown her proposed endeavor [as originally described] . . . stands to sufficiently extend beyond her trainees, students, and sports clients to impact the industry more broadly than her specific programs.”

On appeal, the Petitioner states that the business plan includes “a detailed description of her proposed endeavor . . . establishing [its] national importance,” and that the Director did not give due consideration to “an Economic Impact Analysis . . . produced by an independent source.” The Director acknowledged the economic impact analysis in the decision. But the analysis carries questionable weight; it indicates that the “objective [of the Petitioner’s business] is to support U.S. companies to operate more efficiently by cutting unnecessary costs, improving their business practices, and implementing best practices in business management.” This objective appears to describe a business consulting firm rather than a swim coaching practice.

More significantly, the Director stated that the Petitioner had substantially revised her proposed endeavor after she filed the petition. The Director determined that the new proposal as described in the business plan cannot establish eligibility at the time of filing. The Petitioner does not address this issue on appeal, although it is of central importance because the Petitioner relies heavily on the revised plans.

The Petitioner also repeats general arguments about the importance of increased physical education in schools and the economic impact of her field. A proposed endeavor does not have national importance

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<sup>2</sup> This change affects other elements of the *Dhanasar* national interest framework. For example, the question of whether the Petitioner is well-positioned to continue working as a swimming instructor, based on decades of experience, is very different from whether she is well-positioned to operate an expanding business franchise, an area in which she claims no prior experience or expertise.

simply because it relates to a national goal. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. An undertaking may have national importance for example, because it has national or even global implications within a particular field. *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner’s original proposed endeavor focused on teaching a small number of students, comparable to the teaching activities of the petitioner in *Dhanasar*. We determined in that precedent decision that such teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. The Petitioner has not established that the impact of her work, whether in the economy, public health, or some other area, would be significant enough to be of national importance.

Furthermore, the record raises questions about the extent to which the Petitioner intends to pursue her newly-described business venture. She prepared the business plan specifically to support the petition; the phrase “EB-2 Visa Supporting Documentation” is printed on the cover page. The Petitioner also submitted copies of email messages showing that she was actively pursuing employment with a number of employers in 2020, and documentation showing that a public elementary school hired her in March 2021. This evidence is consistent with the original description of the proposed endeavor.

Different iterations of the proposed endeavor sometimes appear to conflict with one another. On the one hand, the Petitioner cites her business plan on appeal, indicating that she will start a swimming school and oversee its operation and expansion. But the same appeal also includes a letter from the elementary school that hired her in 2021, stating that the school has been unable to locate another qualified candidate for the position.<sup>3</sup> The implication is that the Petitioner intends to run her own business *and* work for the elementary school, but she does not explain how she would fill both these positions at the same time.

The Petitioner has not shown that her proposed endeavor, as originally described, will significantly extend beyond her students to impact education or athletics more broadly at a level indicating national importance. She has not shown that the proposed work offers original innovations that contribute to advancements throughout the field, or otherwise has broader implications. Subsequent material changes to the proposed endeavor cannot retroactively establish eligibility at the time of filing, and the record contains conflicting information about the basic nature of the proposed endeavor. For all these reasons, the Petitioner’s proposed work does not satisfy the “national importance” element of the first prong of the *Dhanasar* framework.

Because the record does not establish the national importance of her proposed endeavor, the Petitioner has not demonstrated eligibility for a national interest waiver. Because this issue determines the outcome of the Petitioner’s appeal, we reserve the appellate arguments regarding the third *Dhanasar* prong.<sup>4</sup>

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<sup>3</sup> Labor certification exists in order to address local worker shortages. Therefore, the lack of qualified U.S. applicants would be a factor in favor of *approving* labor certification, rather than grounds for *waiving* it.

<sup>4</sup> See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

#### IV. CONCLUSION

Because the Petitioner has not met the required “national importance” element of the first prong of the *Dhanasar* analytical framework, we conclude as a matter of discretion that she has not established eligibility for a national interest waiver. We will therefore dismiss the appeal.

**ORDER:** The appeal is dismissed.