



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

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

In Re: 26934056

Date: MAY 25, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a learning specialist, seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as an advanced degree professional, but that the record did not establish that a waiver of the classifications' job offer requirement is in the national interest. 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.

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 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 USCIS may, as a matter of discretion,<sup>1</sup> grant a national interest waiver if the petitioner demonstrates that:

- 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. ANALYSIS

The Petitioner qualifies for EB-2 classification as an advanced degree professional based upon her doctor of education degree in educational leadership from the University [redacted] which she obtained in 2020. The Petitioner also received a master of arts in Christian education from [redacted] in 2012. At the time of filing the petition, she had been employed as a learning specialist at the University [redacted] for approximately three years.<sup>2</sup> The Director found that the Petitioner established only the substantial merit of her proposed endeavor. The issues on appeal are whether the Petitioner has established the endeavor's national importance, whether she is well-positioned to advance her proposed endeavor, and whether, on balance, a waiver of the job offer requirement would benefit the United States.

With respect to the proposed endeavor, a petitioner must identify “the specific endeavor that the [petitioner] proposes to undertake.” *See Matter of Dhanasar*, 26 I&N Dec. at 889. In the Petitioner's initial filing she did not clearly articulate a proposed endeavor, although she referred to the importance of “academic advisors” in a cover letter and submitted a journal article on the role of academic advisors for engineering students. The five letters of support submitted with the initial filing refer to the Petitioner's work as focusing on “educational leadership.” The letters discuss both her dissertation research, which studied student retention for Black African immigrant students, and her work with individual students in academic advising. The Petitioner does not appear to have focused on advising engineering students specifically. However, the letters do not describe her specific proposed endeavor.

In response to the Director's request for evidence (RFE), the Petitioner attempted to further clarify her proposed endeavor. The Petitioner submitted a new, properly completed Form I-140 Petition which states that her proposed job title is “learning specialist” and that the job of a learning specialist is to “provide specialized educational support to students who are struggling [academically] in school.” The initial Form I-140 Petition submitted by the Petitioner did not provide a proposed job title or job description. The Petitioner also submitted a new “proposed endeavor” statement in her RFE response stating that she proposes “to continue with research on retention of college students by designing a program for all undergraduate and graduate students that will be a source of high quality and diverse teachers to help remedy the attrition which has been a consistent issue in the U.S.” In this statement, the Petitioner also provides:

My proposed endeavor is to continue research and development, mainly promoting retention for students in higher education and student success. Teaching students

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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).

<sup>2</sup> This employment appears to have begun while the Petitioner was completing her doctoral degree. The record is unclear as to whether this was full-time or part-time employment.

academic skills, helping them to become active independent learners. Students need to develop self-efficacy to succeed but some students especially the “at risk students” need substantial help. I have the experience to assist these students so that they can succeed in their studies and obtain a degree.

Although the RFE response provided some clarification, the record still lacks detail and specificity as to the Petitioner’s proposed endeavor. For example, the Petitioner states several times that her endeavor involves creating a “retention program,” but the Petitioner does not define this term nor provide specifics regarding a retention program that she has developed or plans to develop. Additionally, the Petitioner describes her proposed endeavor as both providing specialized support services to students and as involving research on the retention of college students and student success. However, the Petitioner has not explained how these different aspects of her proposed endeavor relate to each other nor does the record establish what percentage of her work would be devoted to providing individual support services to students and what percentage would be devoted to conducting, publishing, and presenting research. The Petitioner also has not identified a specific research topic within this field.

The Director’s decision describes the Petitioner’s proposed endeavor as working as a learning specialist in the education field and quotes the Petitioner’s statement that this will involve “teaching students academic skills, helping them to become active independent learners.” In concluding that the Petitioner did not establish the national importance of her proposed endeavor, the Director found that the record did not establish that her work would impact the field of education more broadly, as opposed to being limited to her students. The Director also analogized the Petitioner’s “teaching duties” as a learning specialist to the teaching activities in *Matter of Dhanasar*, which we concluded did not demonstrate national importance.

The Petitioner’s primary contention on appeal is that the Director mischaracterized the Petitioner’s proposed endeavor by considering a learning specialist to be similar to a teaching role. The Petitioner states that, rather than being teachers, learning specialists are responsible for coordinating learning and development activities for their institutions, developing learning strategies based on students’ needs, and conducting individual student assessments to gather data which is used to develop better learning strategies. The Petitioner submits on appeal a brief, an updated resume, an article about undergraduate retention and graduation rates, a copy of remarks by former President Barack Obama from 2010 on higher education and the economy, and copies of job postings for learning specialist positions.<sup>3</sup>

We understand the distinction that the Petitioner makes on appeal between the role of a teacher and that of a learning specialist. Additionally, we acknowledge that when evaluating the national

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<sup>3</sup> In determining whether to consider new evidence submitted for the first time on appeal, we ordinarily apply the framework provided in *Matter of Soriano*, 19 I&N Dec. 764 (1988), and *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). This framework asks whether an affected party had notice of an evidentiary requirement, whether the party was given a reasonable opportunity to provide the evidence, and whether the evidence was reasonably available to the affected party at the time it was supposed to have been submitted. *See id.* Because the Petitioner submits the job postings for learning specialists in support of her claim that the Director mischaracterized her proposed endeavor in the decision, we conclude that this appeal represents the Petitioner’s first opportunity to provide this evidence, and we will consider it. As to the other new evidence submitted, although we conclude that the Director sufficiently notified the Petitioner of the evidentiary requirements and the Petitioner had a reasonable opportunity to submit the evidence previously, we will consider that evidence as well as it expands on evidence previously submitted.

importance of the proposed endeavor, the Director focused on the aspect of the endeavor that involves working with individual students. However, we do not conclude, as the Petitioner appears to contend, that the Director's decision wholly mischaracterized the Petitioner's proposed endeavor. We note that the Director used the Petitioner's own language to describe the proposed endeavor, specifically that the endeavor will involve "teaching students academic skills." Additionally, the Director noted in other parts of the decision that the Petitioner also intends to "design and implement a retention program" and "provide specialized educational support to students." As discussed above, the Petitioner has not established the proposed endeavor in detail, but the record does support the conclusion that the endeavor involves at least some individual teaching activities. Moreover, we conclude that in evaluating national importance the fact that an endeavor involves providing individual student services—whether teaching, coaching, advising, or assessing—is relevant to that determination, as it may reflect on the likelihood that an endeavor will have a broad impact. *See Matter of Dhanasar*, 26 I&N Dec. at 893. Finally, even were we to conclude that the Director mischaracterized the Petitioner's proposed endeavor, which we do not, we conduct a de novo review and have considered the evidence in the record in full.<sup>4</sup>

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

The Petitioner asserts on appeal that her proposed endeavor rises to the level of national importance because learning specialists help close the achievement gap between students of different racial, ethnic, and socioeconomic backgrounds; they help create an inclusive learning environment; and they help increase student retention in higher education. Here, the Petitioner cites to the remarks given by President Barack Obama in 2010 on higher education and the economy and to the study on undergraduate retention rates that she submits on appeal. The Petitioner's claim, supported by some of the articles and letters of support in the record, is persuasive that high levels of attrition in higher education is a significant problem facing universities today. However, the Petitioner does not discuss her own specific proposed endeavor as it relates to these claims, nor how her specific endeavor will reduce the achievement gap, create an inclusive learning environment, or increase student retention. Rather, this claim relates to the importance of the occupation of learning specialist in general. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. As such, we conclude that these claims and this evidence do not establish that the Petitioner's specific proposed endeavor has national importance.

The Petitioner also asserts for the first time on appeal that her proposed endeavor will include creating a website that will offer retention services and academic success skills to college students, and that this demonstrates her endeavor's national importance because the website will be available to students

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<sup>4</sup> While we do not discuss each piece of evidence, we have reviewed and considered each one.

nationwide. However, a petitioner must establish eligibility at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform with USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998).<sup>5</sup> The Petitioner has not explained how the development of this website relates to the other parts of her proposed endeavor, such as whether she plans to also continue her employment at a university or whether she plans to continue research related to student retention. However, it appears that this website proposal, mentioned for the first time on appeal, would significantly change how she completes her proposed endeavor and may represent a material change to the endeavor. Moreover, even were we to consider the potential website as part of the Petitioner's original proposed endeavor, she has not provided any further details or evidence regarding this website, such as a business plan. Without sufficient detail, we cannot accurately analyze the proposed endeavor to determine if it rises to the level of national importance. For these reasons, we conclude that the Petitioner has not established her proposed endeavor's national importance with her claim on appeal that she will develop a website.

As to the Petitioner's claim that her proposed endeavor has national importance because she will conduct research on retention for students in higher education, she makes only a passing reference to this claim on appeal. Evidence of engaging in original research may help demonstrate an endeavor's national importance, as the findings of that research may be disseminated through the field and may result in a broad impact. *See Matter of Dhanasar*, 26 I&N Dec. at 891-92. However, as stated above, the Petitioner does not establish what amount of her work would be devoted to conducting, publishing, and presenting research as opposed to providing individual support services to students. Further, the Petitioner does not describe in detail her proposed research topics, other than that her research would relate to student retention. For example, the record is not clear as to whether by "research" the Petitioner refers only to conducting student assessments to determine appropriate learning strategies and evaluate their effectiveness, or whether the Petitioner proposes to engage in original research, such as researching the different learning challenges of specific student populations or developing new interventions for use by learning specialists. Without further evidence related to the specific research that the Petitioner intends to pursue and its potential to impact the field of student retention, the Petitioner has not established the national importance of her endeavor based upon her claim that she will engage in research.

Although the record reflects the Petitioner's intention to provide beneficial services to students to help them succeed in higher education, particularly those at high risk of dropping out of school, the Petitioner has not offered sufficient information or evidence to establish that the prospective impact of her specific proposed endeavor rises to the level of national importance. In *Matter of Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of national importance because they would not extend beyond his students to impact the field more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. Here, understanding that the Petitioner's proposed endeavor differs from that of a classroom teacher, we nevertheless conclude that analogously, the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her university, her student population, or her potential website customers to impact the field of higher education at a level commensurate with national importance.

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<sup>5</sup> If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the original evidence in the record. *See id.* at 176.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We acknowledge the Petitioner’s arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner’s eligibility under the first prong, we reserve our opinion regarding whether the record satisfies the remaining *Dhanasar* prongs. See *INS v. Bagamasbad*, 429 U.S. at 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”).

### III. CONCLUSION

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

**ORDER:** The appeal is dismissed.