



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

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

In Re: 28562186

Date: OCT. 31, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an athlete-trainer, 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 Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be 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. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) 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 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,² 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 states that he has more than 12 years of experience in martial arts. Describing his proposed endeavor he states, “I intend to continue using my expertise and knowledge in Brazilian Jiu Jitsu and athletics by operating my own company focusing on Jiu Jitsu/Grappling competitions and personal fitness.” The Petitioner states that he will “direct business activities of [his] own company, generating revenues and creating jobs for U.S. workers.”

The Petitioner asserts that he is eligible for the EB-2 classification as a member of the professions holding an advanced degree. With the initial filing the Petitioner submitted evidence of his education and experience, a personal statement describing his proposed endeavor and claimed eligibility for a national interest waiver, recommendation and support letters, and evidence of awards and recognition in the field of martial arts. He also submitted industry reports and articles discussing growth trends in martial arts studios in the United States and the importance of physical education and physical activity.

A. Member of Professions Holding an Advanced Degree

The Petitioner asserts that he qualifies for advanced degree professional classification by virtue of a foreign education equivalent to a U.S. baccalaureate degree and more than five years of post-baccalaureate experience in the specialty, in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). He does not make any claim to qualify as an individual with exceptional ability.

The Director found that the Petitioner qualifies for classification as a professional holding an advanced degree, however, the Director did not explain the basis for this determination. After reviewing the record, we disagree with the Director’s determination.

As noted above, a petition for an advanced degree professional must include evidence that a petitioner possesses a “United States academic or professional degree or a foreign equivalent degree above that of baccalaureate [or] 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

² 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).

master's degree." 8 C.F.R. § 204.5(k)(2). In addition, a petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12).

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner submitted his diploma and academic transcripts from [redacted] in Brazil along with an academic evaluation, demonstrating that he has a foreign equivalent of a U.S. bachelor's degree in business administration awarded on March 15, 2014. The record also demonstrates that the Petitioner completed a three-year program in theology on March 24, 2017 with the [redacted] in Brazil, and that this is equivalent to three years of undergraduate study in theology at a U.S. institution of higher education.

The record does not reflect that the Petitioner has five years of progressive post-baccalaureate experience. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "evidence in the form of letters from current or former employer(s) showing that the [petitioner] has at least five years of progressive post-baccalaureate experience in the specialty." The record includes the following letters describing the Petitioner's work experience:

- A letter from [redacted] "Empresario," stating that the Petitioner has worked self-employed as an independent sporting event organizer since January 2005 and describing his duties. The letter is dated September 10, but does not reflect the year it was written.
- A letter, dated September 13, 2021, from [redacted] "Presidente," stating that the Petitioner "acted as Professor and organizer of events in the Fight Department of the [redacted] Fight Sports Association ... from July 2008 to January 2019," The letter is on letterhead with the logo of "[redacted] Jiu Jitsu."

As noted above, the Petitioner was awarded his baccalaureate degree on March 15, 2014. As required by 8 C.F.R. § 204.5(k)(3)(i)(B), the Petitioner must document his post-baccalaureate experience from March 15, 2014.

The letter from [redacted] describes experience the Petitioner gained before he earned his baccalaureate degree and does not include an end date, or the year that the letter was written to determine the full amount of post-baccalaureate experience. The letter also does not indicate whether the self-employment was full-time or part-time to calculate the total post-baccalaureate experience. Therefore, we are precluded from determining the amount of experience this letter claims to support. Further, the letter does not explain how [redacted] has knowledge of the Petitioner's experience or self-employment.

The letter from [redacted] would show the Petitioner gained approximately four years, nine months of post-baccalaureate experience, from March 15, 2014 to January 2019, which is less than five years. However, the letter does not address whether the experience is full-time or part-time to confirm the total timeframe of the experience. Additionally, the letter does not explain how [redacted] President of [redacted] Jiu Jitsu, has knowledge of the Petitioner's claimed experience with [redacted] Fight Sports Association.

Additional inconsistencies further preclude us from determining that the Petitioner possesses five years of post-baccalaureate experience. The Petitioner submitted academic records demonstrating that he completed three years of study in theology from 2013 to 2016 and was awarded his diploma in 2017. The Petitioner's full-time course of study from 2013 to 2016 overlaps with his claimed post-baccalaureate experience from March 15, 2014. The two experience letters in the record do not indicate whether the Petitioner's experience was full- or part-time. This casts doubt on the total amount of full-time experience that can be credited to the Petitioner.

The Petitioner submitted prior non-immigrant visa applications in 2013 and 2019. In his 2013 application the Petitioner listed his employment as a sports minister with a church and states that he was not previously employed. He also lists the dates of attendance for his baccalaureate program as February 2, 2008 to December 15, 2012.

In his 2019 application the Petitioner listed his employment as a self-employed pet memorial business since January 10, 2016. He listed his previous employment and education as follows:

- Employment as a minister with the church from June 10, 2011 to December 31, 2015.
- Employment as a "propagandista" with [redacted] from February 1, 2011 to June 21, 2011.
- Dates of attendance for his baccalaureate program as February 1, 2009 to December 1, 2013.

The record also includes the Petitioner's "Summary of Professional Qualifications." Under "Professional History" the Petitioner describes the following experience:

- From January 2005 to January 2016 with [redacted] as a sporting event organizer.
- From July 2008 to January 2019 with "[redacted] BJJ" as a Brazilian Jiu Jitsu professor and event organizer.

The Petitioner's summary does not list any employment in the pet memorial business, as a minister with a church or as a propagandist with [redacted], as claimed on his prior non-immigrant visa applications. Nor does the Petitioner's summary describe any experience with [redacted] Fight Sports Association, as described in the experience letter from [redacted]. Further, the Petitioner does not explain how he was able to attend a full-time course of study in theology, operate a pet memorial business and serve as sporting events organizer full-time during overlapping dates.

The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In sum, the record does not demonstrate that the Petitioner has at least five years progressive experience following his bachelor's degree as required by 8 C.F.R. § 204.5(k)(2). However, because the Petitioner was not on notice of these issues, this does not form the basis of our dismissal, but the Petitioner must address and resolve the inconsistencies in his employment history and claimed qualifying experience in any further filings.

B. Substantial Merit and National Importance

The Director determined that while the Petitioner established that the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance as set forth under the first prong of the *Dhanasar* analytical framework. We agree, for the reasons explained below.

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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Petitioner's response to the RFE includes an updated professional plan and statement, additional letters of support and recommendation, additional industry reports and articles, and copies of evidence previously submitted.

After reviewing the Petitioner's RFE response, the Acting Director determined that the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has substantial merit. However, she concluded that the Petitioner had not demonstrated that his proposed endeavor had national importance. The Acting Director stated that the record did not demonstrate that the Petitioner's business will have a regional or national impact at a level consistent with having national importance, or that the Petitioner's work will have broader implications in his field of endeavor, going beyond his own business and clients. The Acting Director further noted that the Petitioner did not submit a business plan describing in detail how his proposed endeavor has national importance. Additionally, the Acting Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of his prospective contributions to the United States, an urgent national interest in his contributions, the potential creation of jobs, or that his self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief and asserts that the Acting Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law." He further asserts that the Acting Director did not give due regard to all evidence in the record, including his personal statement, his resume, his professional plan, evidence of his work in the field, letters of recommendation, and industry reports and articles. In his brief on appeal, the Petitioner

references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that he merits a national interest waiver.

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

The Petitioner submits articles and industry reports describing the importance of physical education and physical activity.³ However, the Petitioner does not explain how this demonstrates that his proposed endeavor is of national importance. 2021 industry reports titled “Martial Arts Studios” and “Personal Trainers” discuss growth trends in these fields, including growth in demand and revenue. However, the reports are general in discussing nation-wide trends, rather than supporting that the Petitioner’s proposed endeavor will have a broad impact in the field of athletic training. A 2015 report by the United Nations Educational, Scientific and Cultural Organization discusses quality physical education in schools. However, the Petitioner does not state in his professional plan any intention to work with a school system. A 2018 report on physical activity guidelines for Americans discusses the importance of physical activity and a healthy lifestyle but is also general in nature. When 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 “the specific endeavor that the foreign national proposes to undertake.” *See id.* at 889. Much of the Petitioner’s evidence relates to shortages and trends in the field generally, rather than his specific proposed endeavor. Even considering the articles, reports, and statistics collectively and in the totality of circumstances, we still conclude that they do not support a finding that his specific proposed endeavor has national importance.

The Petitioner also submits his professional plan and statement to support the national importance of his proposed endeavor. As noted, to establish national importance, the Petitioner must demonstrate the proposed endeavor’s impact. In *Dhanasar*, we 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.* at 889. Although the Petitioner states that his projects are “profitable, they generate opportunities for economic growth and positive impact [to] the national economy, generating direct and indirect jobs,” he has not supported these assertions with sufficient independent, objective evidence. The Petitioner does not state a location for his proposed Jiu Jitsu company and does not provide a business plan or describe his proposed business activities. Although the Petitioner states on appeal that his professional plan “allows concrete projections of the benefits he may offer to the U.S.,” the professional plan does not state the number of employees the Petitioner intends to hire or jobs he will create. Nor does he describe the investments or funds he will use to launch his proposed company or provide any forecast of revenue or income. The evidence does not suggest that the Petitioner’s skills differ from or improve upon those already available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner’s experience will reach beyond benefitting his own company and clients or have broader

³ While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

implications within the field of athletic training. The record does not establish that his proposed endeavor stands to impact the field as a whole.

On appeal, the Petitioner relies upon the evidence he previously submitted and asserts that the Acting Director imposed a “stricter standard, and erroneously applied the law,” and did not consider the evidence objectively. The Petitioner does not identify the Acting Director’s standard or erroneous applications of law. While we acknowledge the Petitioner’s appellate claims that the Acting Director did not duly consider certain pieces of evidence, we note that the decision discusses each of the claimed pieces of evidence the Petitioner’s lists in his brief. Nevertheless, we address them again herein. The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the trends in the martial arts and athletic training fields. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor’s national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner’s proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding his eligibility under the second and third prongs.⁴ 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).

III. CONCLUSION

As the record does not establish that the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree, or that he has met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner is not eligible for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

⁴ In her decision the Acting Director concludes that the evidence “establishes the Petitioner is well-positioned to advance his proposed endeavor with his education, skills, track record of success and future plans as an Athlete/Trainer.” Although, we disagree based on the deficiencies noted in the claimed experience outlined above, because we conclude that the Petitioner has not established his proposed endeavor is of national importance, this is dispositive of the appeal, and it is unnecessary to analyze any remaining issues.