



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

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

In Re: 30413646

Date: APR. 3, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a teacher, seeks second preference employment-based immigrant classification as an advanced degree professional. 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 attached to this EB-2 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 Nebraska Service Center denied the petition, concluding that the record did not establish that a waiver of the job offer requirement is in the national interest. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.¹

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.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification, as either a member of the professions holding an advanced degree 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 an advanced degree professional or an individual of exceptional ability, the petitioner must then establish eligibility for 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 and

¹ The Petitioner refers to the matter both as an appeal of the Director’s decision and as a motion to reconsider our decision to dismiss an appeal pursuant to 8 C.F.R. § 103.5(a)(3). The record reflects that the adverse decision before us is the Director’s decision to deny the Petitioner’s Form I-140, Immigrant Petition for Alien Workers, and not a decision by the Administrative Appeals Office to dismiss a previous appeal. Accordingly, the matter is before us as an appeal pursuant to 8 C.F.R. § 103.3.

states that USCIS may, as a matter of discretion,² grant a petition if the petitioner demonstrates that: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and, (3) on balance, waiving the job offer requirement would benefit the United States.

The Director concluded that the Petitioner established qualification for the EB-2 classification as an advanced degree professional, based upon obtaining a master's degree in conflict resolution and coexistence from [REDACTED]. However, as to the Petitioner's request for a national interest waiver, the Director concluded that the Petitioner established none of the requisite prongs of the *Dhanasar* framework. The Director stated that the Petitioner did not identify a specific proposed endeavor other than stating a goal to be a secondary school language teacher in the United States. Although acknowledging the merits of the teaching profession, the Director concluded that, without further specifics as to the proposed endeavor and its impacts, the record did not establish either the substantial merit or the national importance of the proposed endeavor. The Director also concluded that the Petitioner did not establish that he is well-positioned to advance the endeavor or that, on balance, waiving the job offer requirement would benefit the United States.

On appeal, the Petitioner asserts that the decision is arbitrary, capricious, in excess of statutory jurisdiction, and unwarranted by the facts. The Petitioner also asserts that teaching English as a second language is an endeavor of substantial merit and national importance because it provides social and cultural benefits, promotes communication, and provides cognitive benefits, educational and economic opportunities, and various other benefits to the community. Finally, the Petitioner contends that he has the qualifications to teach English as a second language.

However, the Petitioner does not identify any specific erroneous conclusions of law or statements of fact in the decision. Though the Petitioner asserts that the decision is arbitrary, capricious, and unwarranted, the Petitioner does not support this assertion with specificity as to the Director's findings, the relevant legal framework, or the evidence in the record. Additionally, although we acknowledge the Petitioner's claims about the merit and importance of teaching English, the Petitioner does not address or overcome the Director's specific findings regarding the insufficiency of the evidence. The Petitioner's brief simply claims that teaching English is an important profession, that he is qualified to do it, and that he merits a waiver of the job offer requirement in the national interest.

Upon de novo review, we do not find support for the Petitioner's claims that the decision is arbitrary, capricious, and unwarranted. Rather, the Director's decision discussed and analyzed the evidence in the record consistent with our precedent decision in *Matter of Dhanasar*. Moreover, we agree with the Director that the Petitioner has not established the national importance of the proposed endeavor. As noted by the Director, the Petitioner did not describe a specific, proposed endeavor in the United States other than seeking to enter the workforce as a teacher. But 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 [noncitizen] proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. Additionally, in

² See also *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and the Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

Matter of Dhanasar, we specifically 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 his field more broadly. *Id.* at 893. Here, the same is true. Regardless of the merits and importance of the teaching profession in general, the record does not establish that the Petitioner’s teaching activities have the potential to extend beyond his students at a level commensurate with national importance.

The record does not demonstrate that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, the Petitioner is not eligible for a national interest waiver. We acknowledge the Petitioner’s claims on appeal as to the substantial merit of the proposed endeavor and to the second and third *Dhanasar* prongs but, having found that the evidence does not establish the Petitioner’s eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining requirements of the *Dhanasar* analytical framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *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 the applicant is otherwise ineligible).

ORDER: The appeal is dismissed.