



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

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

In Re: 30649568

Date: APR. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business owner and performer in a company specializing in events, festivals, and theatrical performances, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. *See* 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 immigrant classification. *Id.*

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner met the requirements for 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 immigrant classification, as either an advanced degree professional or as an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

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

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation

that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).¹ Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.² If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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,³ 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

A. EB-2 Classification

The Director did not include a determination on the Petitioner’s eligibility for the EB-2 classification. However, as the record does not establish by a preponderance of the evidence that the Petitioner is eligible for, or otherwise merits, a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner’s eligibility for the EB-2 classification.⁴

B. National Interest Waiver

The first prong of the *Dhanasar* analytical framework, 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. *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner describes her proposed endeavor as being an “Independent Performer of Educational Shows.” In her business plan, she states that her company’s mission is to “produce entertaining plays, host family friendly festivals and events, and produce exciting media content for Jewish (English,

¹ If these types of evidence do not readily apply to the individual’s occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

² USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

³ *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).

⁴ *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.”).

Hebrew and Spanish-speaking) communities in South Florida and on a nationwide basis.” The Director concluded that, while the Petitioner’s proposed endeavor has substantial merit, the Petitioner did not meet any of *Dhanasar*’s three prongs. For the reasons discussed below, we agree with the Director that the Petitioner has not demonstrated the national importance of her endeavor to establish eligibility under *Dhanasar*’s first prong.

In a letter attached to her appeal,⁵ the Petitioner asserts that her proposed endeavor has national importance because it “address[es] the very serious issue of advancing children’s social and emotional development at a time when the United States’ educational system, and the children it must prepare for a future, are in crisis.” She further claims that her proposed endeavor of “creating programs to advance education in social issues, particularly with children, has global implications in so far as her reach extends to the most important resource the world has, children.”

Aside from these general claims, however, the Petitioner has not provided sufficient evidence to demonstrate that her proposed endeavor’s potential prospective impact rises to the level of national importance. The Petitioner emphasizes the importance of children’s education and submitted articles discussing problems in the American education system, including teacher shortages, children’s mental health concerns, and learning gaps particularly after the COVID-19 pandemic. The Petitioner also submitted letters of support from various colleagues, who attested to the Petitioner’s experience in the field and the general benefits of participation in theater and “outside the classroom” activities.

While we acknowledge the Petitioner’s claims regarding the value of quality education, the Petitioner’s reliance upon the field’s importance is insufficient to establish her proposed endeavor’s national importance. The relevant question is not the importance of the industry or profession in which the individual will work. Instead, the focus is on the “specific endeavor that the foreign national proposes to undertake.” *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner has not established that her proposed endeavor stands to impact or significantly reduce any claimed problems in the educational system, such as teacher shortages, children’s mental health concerns, or the consequences of any learning gaps. The record does not quantify any effects that would be directly attributable to her endeavor or elaborate how the endeavor will specifically cause such effects, beyond performing plays and other events for children and their families in the Jewish community on an intermittent basis.

Likewise, although the Petitioner states that she intends to start her business in Florida and then expand it nationwide, she has not shown how her endeavor will benefit more than the direct clients it will serve or that the Petitioner’s business would impact the education industry more broadly.

In her Statement of Intent, the Petitioner also claims her endeavor will promote the local economy by hiring employees. A proposed endeavor may show national importance by having a “significant potential to employ U.S. workers” or “other substantial positive economic effects, particularly in an economically depressed area.” *Dhanasar*, 26 I&N Dec. at 890. However, in this case, the Petitioner’s business plan states that she intends to employ seven people with a staffing budget of \$220,000 in the first year of operation, increasing to 15 people with a staffing budget of \$498,038 by the fifth year of

⁵ The Petitioner indicated on the Form I-290B, Notice of Appeal or Motion, and in a letter attached thereto, that she would submit a brief to the AAO within 30 days of filing the appeal. However, the record does not reflect she filed a written brief within the allowed timeframe.

operation. The Petitioner does not explain how these staffing levels and economic impact are substantial enough to rise to the level of national importance.

Because the documentation in the record is insufficient to establish the national importance of the Petitioner's proposed endeavor as required by *Dhanasar*'s first prong, she has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining issues concerning whether she has established eligibility for the EB-2 classification, as well as eligibility under the *Dhanasar* framework.⁶ See *INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We, therefore, 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.

⁶ In the letter accompanying her appeal, the Petitioner did not address or contest the Director's findings regarding the third prong of *Dhanasar*. Accordingly, we deem this issue waived. See, e.g., *Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (providing that an issue not raised on appeal is deemed waived)).