



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

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

In Re: 30187941

Date: MAR. 06, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a teacher, seeks second preference immigrant classification (EB-2) 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 EB-2 immigrant 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 Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director did not determine whether the Petitioner qualifies for the underlying classification as an advanced degree professional. 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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 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 master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent 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 (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,¹ 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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. *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.

II. ANALYSIS

We will first address the threshold requirement that the Petitioner must qualify for classification under Section 203(b)(2)(B)(i) of the Act, as a member of the professions holding an advanced degree as the Director did not make a specific finding on this issue. Upon de novo review, we conclude that the Petitioner qualifies as a member of the professions holding an advanced degree. The record contains educational evaluations, diplomas, and transcripts showing that she has a U.S. equivalent of a bachelor’s degree in teaching and a doctorate in education.

The remaining issue to be determined is whether the Petitioner has established that 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’s proposed endeavor has substantial merit, but not national importance. On appeal, the Petitioner does not provide any new evidence but asserts that the Director’s analysis of the *Dhanasar*’s first prong “contains instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion.”

The Petitioner first contends that the Director “appears to have conflated the petitioner’s proposed employment with their proposed endeavor” and such “inappropriate conflation . . . would serve to the direct disadvantage of the Petitioner and again manifest as an abuse of discretion on the part of

¹ See *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

the adjudicating officer.” We agree with the Petitioner that the Director, in fact, mischaracterized the Petitioner’s endeavor as “working as a Spanish as a second language teacher” before concluding that the record does not show how this endeavor would offer “broader impact on the field outside of any prospective company and/or clients” or that “the record is not supported by independent and objective evidence demonstrating that [the Petitioner’s] work has potential implications that are of national importance to the U.S.” However, upon de novo review, we agree with the Director’s ultimate conclusion that the Petitioner did not demonstrate national importance of her endeavor, as discussed below.

The Petitioner initially stated that her proposed endeavor is to “promote educational equity, and academic excellence by supporting the Hispanic and Latino community in the U.S. with education, advocacy, and leadership development, hence increasing diversity and inclusion in American learning environments.” The Petitioner’s statement dated September 7, 2022, indicated that “[m]y project consists of an English Language Teaching (ELT) Consultant Group that will benefit 85 school districts in the state and will generate a direct impact on young Hispanic and Latino students by contributing with them to achieve the personal accomplishment of getting their high school diploma and thus reducing the dropout rate in the school district.” The Petitioner further explained that this ELT Consultant Group will benefit the Hispanic and Latino population in navigating the educational services by offering services such as bilingual proficiency certification, English classes after school, inclusion workforce development training, workshops on American educational system, and work-based learning opportunities (e.g., mentorship, internship, apprenticeships).

The Petitioner’s evidence submitted with the initial filing consisted of articles from the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations Children’s Fund (UNICEF) discussing their vision for access and equity in education and press releases from the White House on advancing educational equity. However, the Petitioner did not provide relevant and persuasive details regarding her endeavor, such as how and where she would establish and operate this consultant group, or its specific impact in a region or nationwide. Instead, the Petitioner made generalized claims that her endeavor “addresses a matter that has been explicitly supported by the U.S. government” and “stands for a solution to the whole-of-government effort to tackle equity and inclusiveness in the American educational system.”

The Director’s request for evidence (RFE) issued on March 24, 2023, determined that the Petitioner has not demonstrated substantial merit or national importance of her endeavor and requested documentary evidence that “supports” the Petitioner’s claims and statements. In response, the Petitioner submitted two additional statements, “Detailed Description of the Proposed Endeavor” and “Updated Personal Statement” both dated May 4, 2023, and revised the focus of her proposed endeavor as assisting U.S. public schools in improving their language teaching programs. The Petitioner’s proposal in her “Updated Personal Statement” states the following:

My Proposed Endeavor is working as a Language Teaching Advisor in the U.S., to assist school districts in achieving academic recovery and excellence by supporting the conditions to accelerate language learning and provide better opportunities for their students to become multilingual to comply with federal regulations about multilingualism. In other words, I will serve as a consultant to help a variety of schools from all different levels to elevate education quality to ensure that all students, based

on equity and excellence, receive education that enables them to thrive in school and in life . . .

The Petitioner's proposal included diagnosing strengths and weaknesses of schools in language learning programs, providing strategies to promote individual and small group support for students, and promoting professional development for teachers in approaching multilingual students. However, once again, the Petitioner's evidence submitted in response to the RFE did not discuss details of her endeavor or its specific impact, but included generalized articles on a variety of topics, such as the economic advantages of multilingual workforce, the shortage of public school teachers, and importance of learning foreign languages, as well as the U.S. department of education's statistics and data on types of English learners and language acquisition, and the U.S. department of state's publication on becoming a foreign service officer.

Regarding national importance, we focus on the "the specific endeavor that the foreign national proposes to undertake" and look to evidence documenting the "potential prospective impact" of her work. *Dhanasar*, 26 I&N Dec. at 889. The relevant question is the importance of the Petitioner's specific proposed endeavor and not the importance of the industry or profession in which the individual will work. *Id.* Although we recognize the value of helping Hispanic and Latino students or enriching multilingual programs in schools, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. Therefore, the Petitioner has not demonstrated that her endeavor as a language teaching advisor or consultant is of national importance based on the evidence submitted.

The Petitioner further asserts that the Director's analysis of recommendation letters imposed "a novel or undefined arbitrary requirement" because these letters support the *Dhanasar*'s second prong, whether the Petitioner is well-positioned to advance her endeavor. We acknowledge that the evidence of the Petitioner's knowledge, skills, and experience in her field relate to the second prong which "shifts the focus from the proposed endeavor to the foreign national." *Id.* However, given that much of the evidence submitted in support of the *Dhanasar*'s first prong addresses the industry or profession in which the Petitioner intends to work without discussing her specific proposed endeavor and its specific impact, the Director properly reviewed the totality of evidence on record, including recommendation letters, to determine whether the endeavor has national importance due to its broad impact in the field. *Dhanasar* states: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* at 890. However, the recommendation letters did not discuss the Petitioner's specific methods or innovations that contribute to the field of language instruction overall; instead, they generally praised the Petitioner's skills and experience as a teacher, her commitment and care for students and families, and work ethics.

The Petitioner claims that "ample evidence" was submitted to show national importance of her endeavor and that the Director "did not contemplate or discuss the totality of the evidence submitted for proving the national importance of the Petitioner's proposed endeavor" and this amounts to "abuse of discretion on the part of the adjudicator." However, to determine whether a petitioner has met her burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, we conclude that the

Director weighed all the evidence to evaluate whether the Petitioner had demonstrated, by a preponderance of the evidence, that she meets the first prong of the *Dhanasar* framework but determined that the evidence overall lacked probative value. In the same way that *Dhanasar* finds that a classroom teacher’s proposed endeavor is not nationally important because the effects of his/her work are primarily limited to the school or district, we find that the Petitioner has not established her proposed endeavor in this case will sufficiently extend beyond her students or schools where she will work to impact the education field broadly or affect the regional or national economy overall. *Id.* at 893.

Based on the foregoing, we conclude that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner’s arguments regarding her eligibility under the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that “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 Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.