



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

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

In Re: 29547730

Date: MAR. 7, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an exercise physiologist, 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 EB-2 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 the Petitioner qualified for the requested classification and that a discretionary waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal.

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. Because this classification requires that the individual's services be sought by a United States 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 United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A United States 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. 8 C.F.R. § 204.5(k)(2).

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,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,<sup>1</sup> grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen’s proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

## II. ANALYSIS

The Petitioner proposes to work in the United States as an exercise physiologist. The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he qualified as a member of the professions holding an advanced degree. The Director also found that the Petitioner failed to establish a discretionary waiver of the required job offer, and thus of the labor certification, would be in the national interest.

### A. Advanced Degree Professional

The Director determined that although the evidence establishes that the Petitioner holds the foreign equivalent of a U.S. bachelor’s degree, the record lacked evidence that the Petitioner possesses five years of progressive post-baccalaureate experience. The Petitioner did not claim eligibility for the EB-2 immigrant classification as an individual of exceptional ability.

On appeal, the Petitioner argues that the Director misapplied the law and applied a stricter standard of proof than required. The Petitioner states that he submitted evidence to demonstrate that he acquired over five years of progressive professional experience. The resolution of the issues pertaining to the Petitioner’s eligibility for a waiver of the job offer requirement, and thus of a labor certification, under the *Dhanasar* analytical framework are dispositive of this appeal. For that reason, we will reserve consideration of the Petitioner’s eligibility for the requested EB-2 category. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make “purely advisory findings” on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

### B. Substantial Merit and National Importance

The Director acknowledged that the Petitioner’s proposed endeavor has substantial merit. The Director determined, however, that the Petitioner did not establish the proposed endeavor is of national importance, that he was well-positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement.

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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).

On appeal, the Petitioner asserts that the Director overlooked evidence that demonstrates the national importance of the proposed endeavor based on its potential economic, societal and public health benefits, and its alignment with U.S. government initiatives. For the reasons provided below, we conclude that the Petitioner has not established the national importance of his proposed endeavor and therefore is not eligible for a national interest waiver as a matter of discretion. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The record shows that the Petitioner's proposed endeavor is to continue work as an exercise physiologist in the United States. He shares that he is dedicated to disseminating his expertise in exercise and rehabilitation of musculoskeletal injuries and diseases. The Petitioner further explains that he is committed to creating effective exercise programs tailored for both healthy and vulnerable population, and that his focus will include evaluating posture, movement, flexibility, balance, core function, cardio-respiratory fitness, muscular fitness, and body composition.

In denying the petition, the Director concluded that the Petitioner did not demonstrate that his proposed endeavor has wider implications, has significant potential to employ U.S. workers, and that it would broadly enhance societal welfare or cultural or artistic enrichment. The Director also determined that the Petitioner provided insufficient evidence to confirm whether he intends to pursue his proposed endeavor in an economically depressed area, whether his endeavor would result in employing a significant population of workers in the area, or whether his endeavor would bring substantial positive economic benefits to a region, or its population as contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner contends that the Director neglected crucial documents and did not conduct a proper review of the totality of the evidence presented. The Petitioner argues that the record contains a detailed description of the proposed endeavor, expert opinion letters, probative research discussing the Petitioner's education and experience as well as industry reports revealing the challenges of the industry, the shortage in the industry, and the demand for healthcare professionals. For example, the Petitioner asserts his commitment to his proposed endeavor and contends to have positively influenced the health and societal welfare of the United States and that he is positioned to accomplish even more in the future. He maintains that he is an asset to the physical education field and that his proposed endeavor addresses a matter that a government entity has deemed important or is the subject of national initiatives.

The expert opinion letters' authors emphasize the significance of physical education for the U.S. population and stress the necessity of the Petitioner's proposed endeavor. The authors highlight the Petitioner's intent to provide physical training services and assist individuals in achieving a balanced and healthy lifestyle through personalized training. The authors additionally underscore the economic

growth potential of the healthcare and sports medicine industry and predict that the Petitioner's proposed endeavor will generate significant economic benefits for the country as a result.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Petitioner's work. While the Petitioner claims the endeavor will "bring more jobs" to the U.S. and that he will "positively affect the work product and productivity of Americans throughout the nation" leading to a notable advantage to the U.S. economy, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

Though we acknowledge the Petitioner's assertions and the evidence he submits on appeal, we conclude that the Petitioner has not shown his proposed endeavor stands to sufficiently extend beyond his customers and employers to enhance societal welfare on a broader scale indicative of national importance.

The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that his specific endeavor has national importance under *Dhanasar*'s first prong. The Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. Specifically, the Petitioner has not demonstrated that his specific endeavor stands to provide substantial economic benefits in the United States. While the Petitioner claims that his endeavor will yield extensive benefits for the U.S. economy, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner relies on various industry reports and publications to establish why his profession and proposed endeavor are of national importance. He explains that by tackling the obesity epidemic and improving the physical well-being of the U.S. population, he will directly contribute to increased productivity and lowered healthcare costs. He further argues that his work will address pressing national needs and promote a healthier and more prosperous society. Although we, like the Director, acknowledge the merit of providing physical training, the record does not establish how the proposed endeavor will have broader implications beyond benefitting the Petitioner's patients. As previously mentioned, 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 "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner has not sufficiently explained how he will positively impact the U.S. economy and create direct and indirect jobs to move the U.S. economy on a broad scale rising to the level of national importance.

Though we also acknowledge the Petitioner's experience as an exercise physiologists and skill set and his desire to contribute to the welfare of the community by enhancing their quality of life, the record does not adequately demonstrate that these benefits, even if realized, would impact his field beyond the individuals utilizing his services or employed in the furtherance of his endeavor to rise to a level of national importance. The Petitioner must demonstrate his proposed endeavor offers benefits which extend beyond his community to impact the healthcare industry more broadly.

Moreover, the record does not establish how the Petitioner's endeavor of working as an exercise physiologist may have "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. Without evidence projecting U.S. economic impact or job creation attributable to the Petitioner's proposed endeavor, it is insufficient to assert that the benefits to the U.S. regional or national economy resulting from the proposed endeavor would rise to the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner reiterates that his proposed endeavor is of national importance because it is a matter of national initiatives. The Petitioner must nonetheless demonstrate his specific proposed endeavor of working as an exercise physiologist rather than the importance of the national initiatives and interests, industries, or fields. He has not done so.

It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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 Petitioner has not met the *Dhanasar* analytical framework's requisite first prong, we conclude that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.