



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

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

In Re: 30188978

Date: MAR. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established eligibility for a 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. 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.<sup>1</sup>

## I. LAW

To establish eligibility for a national interest waiver, petitioners must 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,<sup>2</sup> grant a national interest waiver if:

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<sup>1</sup> The Director’s decision only addressed the Petitioner’s eligibility for a national interest waiver. Because the Petitioner did not establish eligibility for a national interest waiver on appeal, we need not remand the matter to the Director in order make a determination on the underlying immigrant classification.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

- 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 job offer requirement would benefit the United States.

## II. ANALYSIS

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. At initial filing, the Petitioner's cover letter stated:

[The Petitioner's] proposed endeavor is to create an educational and technology platform, that will help to improve STEM [science, technology, engineering, and mathematics] education the U.S. Specifically, the platform will seek to enhance existing STEM education and curriculum in schools and help bridge the gap between traditional education and 21st-century education, which incorporates STEM into all aspects of education. The Petitioner's method to structure better education systems is working collectively with schools, educators, industry experts, corporations and investors.

.....

Moreover, [the Petitioner] will employ a new technology called Learning Management System (LMS), where every stakeholder including school district, management teams at school, classroom teachers and parents can be connected seamlessly in one platform. LMS is still evolving technology, but this one technology makes day-to-day works in the education effective immensely such as by reducing numerous paperwork and communications.

(Exhibits omitted.)

In addition, the Petitioner provided a statement reflecting:

My proposed endeavor is to build better education in the United States by leveraging STEM education and education technology. Children is [sic] the future of the country, and there is so much to do to improve how education works in the [redacted] area and further in the state of Massachusetts . . . .

.....

My project starts from building scalable and flexible STEM curriculum. Whenever I work with teachers in traditional subject matters, they highly value the learning effects of my curriculum. First step is to integrate my curriculum into theirs for each grade level, so students can understand the connections among subject matters, STEM and real world. Second step is to scale it to all grade curriculum as flexible as possible in terms of age, gender and background. I will get corporations involved in this phase with my business development capabilities, because they are the ones who know the

latest trends of the world. It is also great for corporations to get their recognitions and exposures from corporate social responsibility perspectives . . . .

Also, innovative education technologies are often invented by startups. Education technology is often regarded as the last biggest frontier of technological innovation, and I have been working education technology startups through my investment activities. LMS is just an example of what education community has benefited from, and there are numerous companies in the United States trying to innovate education with their great technologies. As an investment and business development professional, it is my important skill to validate what works better in school and education systems.

In response to the Director's request for evidence (RFE), the Petitioner provided a business plan for "establishing and running an educational entity in Massachusetts." In addition, the Petitioner offered a "National Interest Statement" indicating:

STEM education can help close the gap between different demographics. By providing all students with access to high-quality STEM education, we can help level the playing field and give all people the opportunity to succeed.

. . . STEM education and education technology is crucial in the United States to drive economic growth, provide job opportunities, foster innovation, address workforce gaps, and tackle societal challenges. My endeavor in STEM education and education technology will contribute to the US to secure its economic future, maintain its technological leadership, and create a skilled workforce capable of meeting the demands of a rapidly evolving world.

On appeal, the Petitioner maintains:

This endeavor is plainly different from the proposed employment the Petitioner seeks to hold in furtherance of the endeavor. The Petitioner's employment as by establishing and running an educational entity should accordingly only be considered as a vehicle by which to achieve or otherwise further endeavor, and we respectfully request that the adjudicating officer base the national importance assessment on the Petitioner's proposed endeavor as is required by the controlling precedent.

The Petitioner did not initially indicate any intention to own and operate a business. The Petitioner must establish all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of opening, owning, and operating his own educational entity.

As it relates to substantial merit, the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner provided a wide range of topics and information regarding STEM, education and technology. Here, the Petitioner has shown the substantial merit of his initial proposed endeavor.

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 specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of creating his educational and technology platform rather than the importance of STEM fields, education, occupations, and related topics.<sup>3</sup> 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.

Moreover, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of his work. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how his platform largely influences the field and rises to the level of national importance. Similar to this case, in *Dhanasar*, we determined 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. The record does not show through supporting documentation how his particular endeavor sufficiently extends beyond his prospective students or clients in the [ ] Massachusetts area, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.<sup>4</sup>

Finally, the Petitioner did not show how his educational and LMS technology platform has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Instead, the Petitioner argues and references to documentation relating to the general opportunities for the STEM workforce and marketplace. Without evidence regarding any projected U.S. economic impact or job creation attributable to his particular future work, the record does not show any benefits to the U.S. regional or national economy resulting from his educational and technology platform would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

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

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<sup>3</sup> The Petitioner's arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national importance part.

<sup>4</sup> See also generally 5 USCIS Policy Manual D.2, <https://www.uscis.gov/policymanual> (instructing that while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance).

demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.<sup>5</sup>

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.

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<sup>5</sup> 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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).