



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

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

In Re: 27007842

Date: AUG. 1, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the field of physical education, 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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.

“Advanced degree” means any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. *Id.*

“Profession” means one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32),¹ as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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, 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 discretion², 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

The Petitioner proposed to work in the United States as an entrepreneur in the field of physical education. He holds a bachelor’s degree in physical education from [REDACTED] University. He was an assistant basketball coach at [REDACTED] School in Ukraine from January 2014 to May 2017 and the chief basketball coach at [REDACTED] in China from October 2017 to September 2018. He worked as a physical education teacher at [REDACTED] School from September 2018 to July 2019 and at [REDACTED] School from September 2019 to July 2020. The Director determined that the Petitioner is eligible for the EB-2 classification as a member of the professions holding an advanced degree, and we agree. The remaining issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of that classification’s job offer requirement. We conclude that he is not.

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 Director determined that the Petitioner’s proposed endeavor to work as an entrepreneur in the field of physical education has substantial merit, and we agree. However, the Director found that the evidence submitted does not support the Petitioner’s statements that the proposed endeavor will have potential prospective impact and determined that the Petitioner has not established that the proposed endeavor is of national importance.

On appeal, the Petitioner maintains that his proposed endeavor has national importance, that he is well positioned to advance the proposed endeavor, and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of the labor certification.

² 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).

At the time of filing his petition, the Petitioner submitted his statement, diplomas, transcripts, an evaluation report of his academic records, letters from his former employers, a reference letter from a basketball head coach, an article showing his participation in a teachers' exhibition held at an elementary school in China in 2018, copies of awards and medals, an article about a basketball training camp in Ukraine, an article about a press conference of a basketball club in Ukraine, articles showing game schedule of the European Youth Basketball League competition in 2008, and the printout from a website showing his participation in the European Youth Basketball League competition in 2011. In response to a request for evidence (RFE), the Petitioner submitted a business plan of his company, [REDACTED] a certificate of incorporation of [REDACTED], which was incorporated in New York in 2021, and an expert opinion letter from a professor at [REDACTED] University. On appeal, the Petitioner does not submit new evidence to overcome the deficiencies noted in the Director's decision. While we may not address each piece of evidence individually, we have reviewed and considered each one.

The Petitioner proposed to open a basketball academy in New York, operate the basketball academy as the chief executive officer, and provide basketball programs, lessons, and summer camps.³ The Petitioner indicated that he plans to instruct and coach athletes in the field of physical education, focusing on improving players' techniques and helping them grow competitively.⁴ The Petitioner also indicated that he will strengthen the public's interest in basketball, educating players about different cultures, skills, and core values, such as sportsmanship, responsibility, self-motivation, discipline, and self-confidence.⁵

The Petitioner contends that his proposed endeavor has significant national importance because physical education is integral to the education of every child in kindergarten through grade 12. The Petitioner further asserts that physical education offers numerous benefits, including improved physical fitness, skill development, self-discipline, improved judgment, stress reduction, strengthening peer relationships, improved self-confidence, and setting and achieving goals.

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." *See Dhanasar*, 26 I&N Dec. at 889. While we acknowledge the benefits of physical education, the relevant question is not the importance of physical education or physical education professionals. The Petitioner must demonstrate by a preponderance of the evidence that the specific endeavor he proposed to undertake - establishing a basketball academy and providing basketball programs, lessons, and summer camps - is of national importance.

The Petitioner also contends that his proposed endeavor as a basketball coach and an entrepreneur in basketball coaching is a pressing priority for U.S. education because of the growing shortage of a proficient workforce, which will adversely affect the economic growth and scientific advancement in the years to come. The Petitioner further states that employment of coaches and scouts is projected to grow 20 percent from 2021 to 2031; 39,000 openings for coaches and scouts are projected each year

³ See the business plan of [REDACTED], at 3, undated.

⁴ See *id.* at 3.

⁵ See *id.*

over the next decade; and the growing interest in college sports, professional sports, and sports recreation instruction will increase the demand for coaches and scouts.

The U.S. Department of Labor addresses worker shortages through the labor certification process. Therefore, a shortage of qualified professionals alone is not sufficient to demonstrate eligibility for the national interest waiver. *See Dhanasar*, 26 I&N Dec. at 885.

The Petitioner further contends that his proposed endeavor has a national or even global impact on the health and wellbeing of youth and children because the global sports industry is growing rapidly, because the global market size is expected to grow by \$49.07 billion between 2020 and 2025, and because increased promotional and governmental support for sports participation will benefit the sports coaching industry over the next five years to 2027.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. An 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.* We look for broader implications. *Id.* An 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.

While we acknowledge the Petitioner's claims, he has not provided sufficient evidence to substantiate them. For example, he has not provided sufficient documentary evidence that his proposed endeavor as the chief executive officer of a basketball academy would impact the field of physical education, the sports coaching industry, the sports industry, or the health and wellbeing of youth and children more broadly rather than benefiting his own basketball academy and its students, trainees, players, or athletes. Without sufficient documentary evidence of their broader impact, the Petitioner's proposed employment does not meet the national importance element of the first prong of the *Dhanasar* framework.

Regarding the Petitioner's assertion that he plans to provide basketball programs and lessons and instruct and coach athletes, the record does not show that this undertaking has broader implications for his field, as opposed to being limited to those who participate in his training or coaching sessions. While the Petitioner's plans to provide training or coaching services have merit, the record does not sufficiently demonstrate that his instructional or coaching activities offer benefits that extend beyond his trainees or students to impact the field of physical education, the sports coaching industry, or the sports industry more broadly. Likewise, 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. *Dhanasar*, 26 I&N Dec. at 893.

In support of his request for a national interest waiver, the Petitioner submitted an expert opinion letter from [redacted] a professor in the sport management program within the department of kinesiology at [redacted] University. [redacted] asserts that the Petitioner's proposed endeavor has substantial positive economic effect because basketball is one of the most popular sports. [redacted] further explains that during the 2019-20 season, 30 NBA teams have generated \$8.3 billion in revenue; basketball-related income includes broadcast rights, advertising, merchandizing, and concessions; the

sports coaching industry is a \$10 billion industry in the United States; the number of players in the industry is 163,538; and the contribution to industry employment is 280,770.

Regarding the expert opinion letter from [] USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). Nevertheless, USCIS is responsible for making the final determination regarding a petitioner's eligibility for the benefit sought. *See id.* Here, the revenue generated by the NBA teams during a season and the number of players and other employees in basketball industry may indicate the popularity of basketball and the importance of the basketball industry in the United States. However, they do not directly address the specific endeavor that the Petitioner proposed to undertake - establishing a basketball academy - and do not establish positive economic effect of his basketball academy.

As for the economic value and job creation that the Petitioner asserts his company will offer, the business plan includes projections of hiring 28 employees, including 17 coaches, four sports doctors, four sales managers, and three accountants, \$1,495,726 in total payroll expenses, \$2,093,308 in total sales, and \$84,321 in total net profit at the end of five years of operation.⁶ However, the business plan does not adequately explain how this revenue and staffing targets will be realized. The preponderance of the evidence standard requires that the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *See Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. *See id.* Here, lack of supporting details detracts from the credibility and probative value of the business plan. Moreover, even if all the projections in the business plan were realized, the record lacks sufficient evidence demonstrating that the Petitioner's business will have an impact on the field of physical education, the sports coaching industry, or the U.S. economy at a level commensurate with national importance.

The Petitioner asserts that in the first year of operation, his company will target children and youth in New York; in the second year of operation, his company will open another basketball academy in [] Illinois; and in the third year of operation, his company will open another basketball academy in [] Florida.⁷ However, the Petitioner has not offered sufficient evidence that his company will employ a significant population of workers in economically depressed areas or that the proposed endeavor would offer the three cities or their populations a substantial economic benefit through employment levels or business activity. He has not sufficiently demonstrated how the creation of 28 jobs by his company would constitute employment of a significant population of workers in the areas or that the creation of these jobs would offer the cities or their populations a substantial economic benefit through employment levels.

In addition, while the Petitioner claims that his company will generate \$2,093,308 in total sales and \$84,321 in total net profit at the end of five years of operation, the Petitioner has not demonstrated that this revenue stands to substantially affect economic activity regionally or nationally. The Petitioner has not otherwise provided sufficient information and evidence to demonstrate the prospective impact

⁶ See the business plan of [], at 28 and 44.

⁷ See *id.* at 8.

of his proposed endeavor rises to the level of national importance. Accordingly, the record does not sufficiently demonstrate that the Petitioner's proposed endeavor is of national importance, and the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not sufficiently 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. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. We will reserve these issues for future consideration should the need arise.⁸

III. CONCLUSION

Although the Petitioner has shown that he is a member of the professions holding an advanced degree and that his proposed endeavor to work in the United States as an entrepreneur in the field of physical education has substantial merit, he has not shown by a preponderance of the evidence that his proposed endeavor has national importance. Accordingly, the Petitioner has not established by a preponderance of the evidence that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

⁸ 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 alternate issues on appeal where an applicant is otherwise ineligible).