



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

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

In Re: 27439834

Date: JULY 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a martial arts instructor, seeks classification as a member of the professions holding an advanced degree. 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 that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualifies for the EB-2 classification, the record did not establish that a waiver of the job offer requirement is 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.

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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

¹ *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).

- 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 record shows the Petitioner obtained the foreign equivalent of a bachelor of science degree in physical education, followed by at least five years of progressive experience as a martial arts instructor. Therefore, the Petitioner qualifies for the EB-2 classification as an advanced degree professional.

The Petitioner proposes to establish a martial arts academy in Massachusetts. The Director concluded that although the Petitioner established the substantial merit of the proposed endeavor, the Petitioner did not establish its national importance. The Director found that the Petitioner did not establish that the martial arts academy would have a broad impact on the field of martial arts commensurate with national importance, but rather that its impact would be limited to the business's customers. The Director also found that the evidence was insufficient to establish the potential for significant positive economic effects. Finally, the Director found that the evidence in the record regarding entrepreneurship and its benefits to the economy did not establish national importance because the evidence relates to entrepreneurship in general and not the Petitioner's specific proposed endeavor. The Director did not specifically analyze the second or third prongs of the *Dhanasar* framework, stating that because the Petitioner did not establish eligibility under the first prong, the Petitioner did not demonstrate eligibility for a national interest waiver.

On appeal, the Petitioner first makes a procedural argument, asserting that it was erroneous of the Director to deny the petition based only upon the lack of national importance and not provide an analysis of the record as to the second and third *Dhanasar* prongs. The Petitioner asserts that this is a violation of USCIS policy, the United States Constitution, and international treaties, but does not cite to a specific policy, treaty, or constitutional principle in support of this claim. The Petitioner also vaguely asserts a due process claim, but does not identify due process rights that are implicated in the adjudication of her national interest waiver petition. *See Lang v. Payne*, 476 U.S. 926, 942 (1986) (stating that “[w]e have never held that applicants for benefits. . . have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment.”); *see also Azizi v. Thornburgh*, 908 F.2d 1130, 1134 (2d Cir. 1990) (explaining that the Fifth Amendment protects against deprivation without due process of property rights granted to noncitizens; however, petitioners do not have an inherent property right in an immigrant visa). Moreover, we conclude that the Director's decision sufficiently explained the reasons for denying the petition and provided the Petitioner a fair opportunity for meaningful appellate review related to the basis of denial. *See* 8 C.F.R. § 103.3(a)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). We note that the Director provided a detailed and thorough analysis of the evidence in the record relating to the first prong of the *Dhanasar* framework and why the evidence is insufficient to establish the national importance requirement. A petitioner must establish that they can meet all three *Dhanasar* prongs. In not establishing national importance, the Petitioner would not be able to establish the requisite eligibility under all three prongs. Moreover, as

discussed below, we conclude that the Petitioner has not overcome the basis for the Director's denial and upon de novo review has not established the national importance of the proposed endeavor.²

As to the Petitioner's substantive claims regarding the national importance of the proposed endeavor, the Petitioner first makes the general assertion that the Director did not apply the proper standard of proof and did not "give due regard" to the evidence in the record, including the Petitioner's resume, work experience, business plan, and letters of recommendation. However, the Petitioner does not discuss the evidence in the record with specificity, does not describe how it was disregarded by the Director, and does not attempt to address or overcome the Director's specific conclusions regarding the insufficiency of the evidence. Moreover, upon de novo review, we agree that this evidence does not establish the national importance of the proposed endeavor, as we discuss below.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

As to the Petitioner's resume and work experience, we note that this evidence generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether he is well-positioned to advance it. *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the Petitioner's specific endeavor—to operate a martial arts academy—has national importance under *Dhanasar*'s first prong. The Petitioner's resume and evidence of his work experience do not discuss the Petitioner's proposed endeavor or help demonstrate its "potential prospective impact." *Id.* at 889. Similarly, the four letters of recommendation submitted by the Petitioner, although they speak highly of the Petitioner's skills and experience as a martial arts instructor, do not discuss the Petitioner's proposed endeavor nor help establish its national importance.

As to the business plan, in addition to the assertion that the Director did not give due regard to this evidence, the Petitioner also asserts specifically that the business plan establishes the national importance of the proposed endeavor based on the projected wages that the business will pay its workers and the fact that the Petitioner plans to locate the business in a "historically underutilized business zone."³ The Petitioner's business plan projects that the proposed endeavor will generate around \$3.2 million in revenue by year five and create 67 full-time jobs, but there is no clear methodology or basis for these projections. As such, we cannot assess whether the business plan's stated revenue projections and job creation estimates are credible, and we conclude that the Petitioner has not met his burden to establish that his proposed endeavor stands to have "substantial positive

² We do note that because the Director has not made detailed findings as to the second and third *Dhanasar* prongs, if the Petitioner, through any future motion filings, were to overcome the basis for the denial, we would remand the matter to the Director to make findings as to the second and third *Dhanasar* prongs in the first instance.

³ The Petitioner did not provide evidence of currently operating the proposed martial arts academy. The Petitioner did submit business registration documents for a limited liability company to operate the proposed martial arts academy. The principal business location stated on those documents is the Petitioner's residential address.

economic effects” that would be commensurate with national importance. *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Petitioner next claims on appeal that he has established his endeavor’s national importance through the industry reports and articles that demonstrate the “vital role” of entrepreneurship to the U.S. economy. The Petitioner also cites studies from the Bureau of Labor Statistics and Ernst & Young related to entrepreneurship and the U.S. economy and articles from the American Immigration Council and the Center for American Progress, among others, discussing the positive role that immigrants have on the U.S. economy. But the studies and articles cited by the Petitioner on appeal, as well as industry reports and articles already in the record, do not discuss the Petitioner or his proposed endeavor. Rather, the evidence relates to entrepreneurship and the economy in general, not to the Petitioner’s proposed endeavor of operating a martial arts academy. 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 [noncitizen] proposes to undertake.” See *Matter of Dhanasar*, 26 I&N Dec. at 889. As such, we conclude that the articles and studies raised by the Petitioner do not establish that his specific proposed endeavor has national importance. Moreover, the Director noted this deficiency with the submitted reports and articles in the decision, and the Petitioner does not make any arguments to address or rebut this finding on appeal or to clarify how this evidence could in fact help establish the proposed endeavor’s national importance.

Finally, we note that several sections of the Petitioner’s appeal refer to the Petitioner as a “business development and sales professional” and discuss the national importance of a proposed endeavor related to business development. Because those sections of the Petitioner’s appeal brief do not relate to the Petitioner’s specific proposed endeavor, or likely the record before us, we will not address them here.

The Petitioner’s primary contention on appeal is that the Director generally disregarded the evidence in the record or did not properly consider it. In support, he largely restates arguments already presented in the initial brief and in the request for evidence (RFE) response. We have thoroughly reviewed the evidence in the record and conclude that although the Petitioner asserts that his proposed endeavor has national importance, he offers little corroborative evidence or explanation to support his claims. Eligibility for the benefit sought is not determined by the quantity of evidence alone but also the quality. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm’r 1989)). Accordingly, we conclude that the Petitioner has not established the national importance of his proposed endeavor.

The Petitioner has not established that his proposed endeavor has national importance, as required by the first prong of the *Dhanasar* analytical framework. Because the Petitioner has not met the requisite first *Dhanasar* prong, we conclude that the Petitioner has not established that he is eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. 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 alternative issues on appeal where the applicant is otherwise ineligible).

III. CONCLUSION

Because the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework related to national importance, we conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.