



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

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

In Re: 26556697

Date: MAY 04, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a distance education specialist, 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 Texas Service Center denied the petition, concluding the record did not establish the Petitioner is well positioned to advance her endeavor or that it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. 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, 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 discretion¹, 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 Petitioner presented evidence sufficient to conclude that she earned the foreign equivalents of a U.S. bachelor's degree in pedagogy and a master's degree in humanities, cultures, and arts. Therefore, she qualifies for the EB-2 classification as an advanced degree professional. The remaining issue is whether the Petitioner established eligibility for a national interest waiver under the Dhanasar framework. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.²

A. Substantial Merit and National Importance

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

Although the Director determined the Petitioner's endeavor has national importance, we withdraw that finding and conclude she has not established the national importance element of Dhanasar's first prong. The Petitioner proposes to work as a distance education specialist in the field of technology applied to education. She plans to establish a Florida-based consulting firm that implements and improves distance education. Specifically, she will provide consulting to corporations, institutions, schools, universities, and government agencies seeking to implement online education and training. Her proposed endeavor goals are to increase access to education, improve the standards of distance education, enhance professional development, and improve technology infrastructure and resources. To do this, she will customize e-learning for clients, as well as design, create, and manage services for distance education programs. The Petitioner explained:

Whatever the learning style of the students, I offer didactic resources so that they learn the content that the teacher is teaching. This facilitates the work of teachers because they will have several resources to teach their discipline, not needing so much effort to explain something that only needs to be adapted to the way the student learns best. This is one of the possibilities of the teaching model that I want to offer the United States in order to optimize learning.

Through articles and reports, the Petitioner emphasized the importance of distance education, of providing engaging content and technological platforms to support it, the barriers to implementing

² When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir. 1992); see also *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993).

quality distance education, and statistics on the cost and efficacy of distance learning. The Petitioner highlighted the importance of Science, Engineering, Technology, and Mathematics (STEM) fields and literacy for both students and teachers in education technology. She also provided evidence of government support for developing distance learning, including the Coronavirus Aid Relief Economic Security Act (CARES Act) and the Department of Education's emergency relief block grants provided to state governments. We conclude the Petitioner has established the substantial merit of her proposed endeavor. In addition, we agree the fields of distance education and STEM are important, and that success in these fields leads to greater opportunities, economic advantages, and the advancement of U.S. interests. However, 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.* While the Petitioner proposes to work in an important industry or field, this is not necessarily sufficient to establish the national importance of the specific proposed endeavor.

The Petitioner highlighted her past successes to suggest that her proposed endeavor will make a similar impact. Specifically, the Petitioner stated she worked at various colleges and universities serving as an online professor and a distance learning manager. In these roles, she developed an online game to facilitate financial learning for 17,000 students; oversaw a learning management system that served over 30,000 students and 1,000 educators; developed a model of delivering education materials in courses serving 14,000 students; and provided 250,000 students in India with a platform that teaches coding. We acknowledge the magnitude of these figures; however, the Petitioner has not provided sufficient independent and objective evidence to substantiate them, nor has she provided sufficient evidence to conclude that her specific role within the organization enabled them to achieve these figures.

Moreover, the Petitioner has not established she will be able to impact similar numbers of people through her proposed endeavor. Rather, it appears these figures relate to the students enrolled in a particular university or educational program for which the Petitioner worked. Here, we draw a distinction between working for a university that has clients (students) as recipients of the Petitioner's services and starting one's own consulting business without a university's resources, funding, and infrastructure. 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.* While we acknowledge the proposed endeavor may impact the individual students or businesses that hire her for her services, it is not apparent how this impact rises to the level of national importance. 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. Likewise, we conclude the Petitioner has not established how her proposed endeavor activities will extend beyond her clients to impact the field of distance education or education technology. Even if the Petitioner proposed to work in a distance learning specialist position within a university, company, or other established organization with similar resources, funding, and infrastructure, the Petitioner would still need to establish the impact of her services.

We reviewed the support letter from the Petitioner's colleague, [REDACTED] The letter states the Petitioner created materials that support students' learning and increased their achievements; however, neither the author nor the Petitioner provided independent and objective evidence of

increased student achievement. [] also mentioned that the Petitioner developed a novel learning system (LMS) model, which the university adopted. The Petitioner explained that she developed this new model for the delivery of education materials in the virtual learning environment and that her model is used in undergraduate and graduate courses. However, neither the Petitioner nor [] sufficiently explained how the Petitioner's model is different or better than other models already available in the field of distance education or education technology such that it would support a finding of impact to these fields. We reviewed the Petitioner's [] University documents, including the Education 3.0 plan and LMS. The Petitioner explained that her model involves learning basics and then progressing to more challenging material. However, without further explanation, the evidence does not demonstrate that her model impacts the field of distance learning or education technology. The evidence does not support a finding that, for example, her model is unique or novel such that it has impacted the field of distance education, nor does the evidence demonstrate the model has reached beyond the [] University system.

Other support letters from colleagues emphasize that she performed well in her past employment positions, achieved success in various projects and programs, and impacted the students and universities where she worked. Even if her proposed endeavor replicates this success, it is not apparent how it would produce an impact rising to the level of national importance. For example, another colleague, [] wrote that the Petitioner impacted the students who used her programs and the educators who attended her presentations, but she did not explain how the Petitioner substantially contributed to the advancement of education overall. In addition, [] letter does not contain detailed and verifiable examples of how the Petitioner impacted students and educators such that we could determine the breadth and depth of the Petitioner's impact.

Upon a review of the evidence in its totality, we conclude the Petitioner's proposed work does not meet the first prong of the Dhanasar framework. The Petitioner has not offered sufficient evidence to support her claims that the endeavor has national importance. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in Dhanasar is unnecessary. Nevertheless, as the Petitioner alleges error in the Director's decision, we briefly discuss her eligibility under the second prong.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The Petitioner established that she has education and experience in her field. She provided evidence of her authorship of articles and an e-book related to distance learning and educational simulators and games. The record further demonstrates that her colleagues value and respect her work and that she and her employer have received recognition and awards. While we acknowledge this evidence, we nevertheless conclude it is insufficient to establish that she is well positioned to advance her endeavor. To illustrate, the Petitioner has not demonstrated that she possesses knowledge or skills within the U.S. education system. This is a relevant consideration because the United States has distinct

education content requirements, as well as testing and grading systems, all of which may differ by state and whether the system is public or private. To further illustrate, the Petitioner has not demonstrated knowledge or proficiency with the learning platforms used in the United States, or that the particular learning platforms she used in Brazil are available and used in the United States such that her skills would translate. While the Petitioner may have translatable skills and relevant knowledge of distance learning and educational technology in the United States, she has not sufficiently supplemented the record to reflect that. Accordingly, we conclude that her education, experience, skills, and knowledge alone do not sufficiently establish that she is well-positioned to advance the endeavor.

In addition, the record does not sufficiently establish the Petitioner's success in related or similar efforts. Although she has demonstrated her capabilities in the context of working with an established employer, she has not demonstrated success in providing distance learning services as part of her own consulting firm. Further, the Petitioner has not submitted sufficient evidence of progress towards achieving the proposed endeavor. We acknowledge she has registered her business in Florida; however, it is not apparent, for example, how many employees she will need in her business, the approximate cost of her services, how she plans to grow, finance, and market her business, or which potential clients she intends to target. Aside from a general letter expressing an intent to consult with the Petitioner, there is little evidence of interest in the proposed endeavor from potential customers, users, or investors. Accordingly, we agree with the Director's conclusion that "the totality of evidence does not demonstrate a record of success, progress towards achieving the goals of her proposed endeavor, or a degree of interest in her work from relevant parties that rises to the level of rendering her well positioned to advance the proposed endeavor as a distance education specialist in the field of education technology."

For the foregoing reasons, the Petitioner has not established she is well positioned to advance her endeavor. Therefore, she has not established eligibility under the second Dhanasar prong.

III. CONCLUSION

As the Petitioner has not met the requisite first and second prongs of the Dhanasar analytical framework, we conclude she has not established eligibility for a national interest waiver. Further analysis of her eligibility under the third prong outlined in Dhanasar would serve no meaningful purpose. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the Dhanasar framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating 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).

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.