



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

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

In Re: 28403716

Date: SEP. 19, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an adapted physical education instructor and entrepreneur, 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. The Director determined that the record established the Petitioner's eligibility for the underlying EB-2 classification but did not establish 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. 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) of the Act.

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," *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 discretion<sup>1</sup>, grant a national interest waiver if the petitioner demonstrates that:

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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).

- 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 Director determined that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree and the record supports this conclusion.<sup>2</sup> Therefore, the sole issue before us is whether the record establishes that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest.

Prior to his admission to the United States in 2018, the Petitioner worked as a multi-sport trainer, instructor, and coach for students of various age ranges and abilities, from young children to professional athletes. He submitted a business plan indicating his intent to establish and serve as president/lead instructor for a swim school that will be located in [REDACTED] Florida. The Petitioner states that the proposed endeavor will offer group swim lessons for children and adolescents, private lessons and personal training tailored to competitive swimmers, private swim lessons for persons with disabilities, swim instructor training courses for adolescents who wish to teach persons with disabilities, and other classes including water aerobics, physical conditioning, general health and well-being, and academic tutoring.

Although the Director found substantial merit in the proposed endeavor, they concluded the Petitioner did not establish that his proposed endeavor has national importance, that he is well-positioned to advance the proposed endeavor, and that, on balance, waiving the job offer requirement would be beneficial to the United States.

On appeal, the Petitioner asserts that the Director overlooked credible and probative evidence, misapplied the legal standards for adjudication of a national interest waiver petition, and inflated the standard of review above the preponderance of the evidence standard. 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 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.

The record includes media and government reports discussing the exercise habits of Americans, the fact that most Americans of all ages do not meet the minimum physical activity recommendations published by the Department of Health and Human Services, and the health-related consequences of inadequate physical activity, including obesity, Type 2 diabetes, and other preventable diseases. The

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<sup>2</sup> The Petitioner provided an official academic record documenting his completion of a bachelor's degree in physical education from a Brazilian university, an educational evaluation indicating that this foreign degree is equivalent to a U.S. bachelor's degree in the same field, and letters from prior employers documenting that he has more than five years of post-baccalaureate work experience in this specialty. See 8 C.F.R. § 204.5(k)(2) (defining "advanced degree").

submitted evidence also addresses the importance of physical exercise to the physical, emotional and mental well-being of persons with disabilities, barriers that impact their access to physical activity, and efforts to ensure that this population, and particularly children with disabilities, are provided with equal opportunities for participation in sports and exercise. Based on this evidence, the record supports the Director's determination that the Petitioner's proposed endeavor to provide swimming instruction, physical training, and related services to children, adolescents and persons with disabilities has substantial merit.

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" and its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we emphasized that "we look for broader implications" of the specific 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." 26 I&N Dec. at 889. 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.

In the business plan for his proposed endeavor, the Petitioner stated that his swim school will increase swim and sports opportunities for people with disabilities, create both direct and indirect jobs, fill a demand for well-trained sports instructors, and promote "health, wellness and fitness" in the community. We have reviewed the staffing and revenue projections in the submitted business plan. The Petitioner projects that his proposed company, within five years, will employ seven employees, cumulatively pay wages of over \$1.1 million, generate gross revenues of over \$3.3 million, and contribute over \$300,000 in tax revenue to the economy.

Even if these employment and revenue projections were adequately supported by details showing their basis or a specific explanation of how they will be realized, the business plan would not demonstrate the proposed endeavor's significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Specifically, the record does not support that the direct creation of seven jobs in this sector or the expected tax revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework. The Petitioner does not claim he will open his swim school in an economically depressed area, that it would employ a significant population of workers in such an area, or that the endeavor would offer a region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue.

We acknowledge the Petitioner's arguments that physical education and exercise are important for the nation's quality of life and productivity, and that a healthier population would have a positive indirect impact on the U.S. economy, in part due to decreased healthcare costs. In this regard, the Petitioner claims that his work "actively creates financial bridges and prompts economic developments that enhance and improve the functionality and monetary output of the nation's economy, as well as the well-being of the individual." However, the Petitioner does not offer an evidentiary basis to conclude that his operation of a swim school with one location will have such far-reaching results. The record does not support a determination that any indirect benefits to the U.S. regional or national economy

resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. See *id.* at 890.

On appeal, the Petitioner contends that the Director placed undue focus on whether his proposed endeavor would have "substantial positive economic effects," noting that job creation and other direct economic impacts, as well as the geographical breadth of the proposed activities, are not the only factors that should be considered in weighing the national importance of the proposed endeavor. We agree and have also considered whether the Petitioner's proposed endeavor will have broader implications in his field or industry.

We determined in *Dhanasar* 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. 26 I&N Dec. at 893. Here, the Petitioner, through his company, intends to offer swim instruction as well as swim instructor training courses for adolescents who wish to teach swimming to persons with disabilities. The Petitioner estimates that he will offer up to three instructor training courses per week by year five, with five participants in each course. Like the petitioner in *Dhanasar*, the Petitioner has not established how his proposed teaching or training activities would reach beyond the limited number of participants in these courses. While there are clearly benefits to teaching children of all ability levels to swim, he did not explain how the courses he intends to provide would have broader implications in the field. The record does not establish, for example, that the Petitioner plans to disseminate his training methods or techniques, such that his specific endeavor would provide a platform for the introduction of new training processes or methodologies for working with persons with disabilities, or that he would otherwise be positioned to influence the broader field or industry in this regard.

Similarly, while the classes and services offered by the Petitioner's swim school will likely enhance the physical and mental well-being of persons who enroll in his classes, the record does not support a finding that the proposed endeavor has the potential to broadly enhance societal welfare at a level commensurate with national importance.

On appeal, the Petitioner asserts that the services offered by his proposed swim school, and particularly those services aimed at persons with disabilities, will have an impact on matters that are the subject of national initiatives by the U.S. government. He submits a Centers for Disease Control and Prevention (CDC) publication titled *Inclusion in School Physical Education and Physical Activity* that is "aimed at state education and health leaders."

USCIS will consider evidence demonstrating how a specific proposed endeavor impacts a matter that a government entity has described as having national importance or a matter that is the subject of national initiatives. Again, in determining national importance, the relevant question is not the importance of the industry 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.

The guidance provided in the newly submitted CDC publication suggests, for instance, that state officials may promote inclusion by partnering or collaborating with state disability program staff, Special Olympics State affiliates, local university departments working with adapted physical education, and adapted sports programs or clubs. The Petitioner's proposed swim school will offer adapted swim instruction to persons with disabilities among many other services, but he has not

indicated any intent to partner or collaborate with state education and health leaders in their inclusion efforts as part of this CDC initiative. Pursuing employment or operating a business in an area that is adjacent to the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. Here, the Petitioner has not demonstrated the potential prospective impact of his specific endeavor to a matter that is the subject of national initiatives.

Finally, to illustrate the potential impact of his proposed endeavor, the Petitioner pointed to his past employment experience and qualifications in the field of physical education. We reviewed his statements and the letters of recommendation from his employers, professional contacts, and students who have benefited from his coaching and instruction. The authors of the letters praise the Petitioner's abilities and subject-matter expertise as a physical education professional, and the attributes that make him an asset to his employers and to the students and athletes he has trained. While the authors express their high opinion of the Petitioner and his work, they do not discuss his specific proposed endeavor or explain why it has national importance. As such, the letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*. Furthermore, we note that the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." 26 I&N Dec at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of his proposed work.

While the Petitioner's evidence establishes how his endeavor stands to positively impact his students and their families, the evidence does not persuasively establish how his endeavor will have a broader impact consistent with national importance. Accordingly, the Petitioner has not established that his proposed endeavor meets the first prong of the *Dhanasar* framework.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning his eligibility under the second and third prongs of 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).

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established 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 reason.

**ORDER:** The appeal is dismissed.