



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

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

In Re: 28457572

Date: SEP. 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a recreation and fitness studies teacher, 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). 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. The Director concluded that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate his eligibility for the requested national interest waiver. 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest."

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.

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 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 Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.³ We agree that the record establishes the Petitioner’s eligibility for the EB-2 classification.

However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first *Dhanasar* prong. The Director further found that the Petitioner did not establish 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 a labor certification. Upon de novo review, we agree with the Director’s determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.⁴

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner initially submitted a professional plan and statement with his Form I-140 indicating that he proposed to work as a post-secondary recreation and fitness studies teacher. The Petitioner stated, “I fully intend to continue my career in the United States as a post-secondary recreation and fitness studies teacher, specifically serving the education system.” (emphasis omitted). His statement further states, “Upon my visa acceptance, I will prospect post-secondary [sic] teaching jobs throughout the United States. Additionally, I will take the necessary steps to . . . market myself to national areas and

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).

³ To demonstrate he is an advanced degree professional, the Petitioner submitted his academic certificate and transcripts from Universidad [redacted] where he completed a program of physical education in 1997; an academic evaluation; and letters from his previous employers. The record demonstrates that he holds the foreign equivalent of a U.S. bachelor’s degree in physical education and at least five years of progressive experience in his specialty. See 8 C.F.R. § 204.5(k)(3).

⁴ While we may not discuss every document submitted, we have reviewed and considered each one.

regions in which teachers with my credentials are in high demand.” The Petitioner also indicated receiving a job offer, “Recently, I have even received a job offer in teaching physical education as Footvolley Coach at [redacted] very first soccer school in Florida.” The Petitioner asserted that his proposed endeavor is of substantial merit and national importance stressing the “rising shortage of teachers at all levels, especially post-secondary teachers”

The Petitioner’s initial description of the proposed endeavor does not provide details beyond his intention to work as a post-secondary recreation and fitness studies teacher for a U.S. institution of higher learning. The Petitioner did not include any specific plans or evidence about being an entrepreneur and starting a sports academy business with his initial submission of the Form I-140.

The Director issued a request for evidence notice seeking further information and evidence that the Petitioner meets each of the three prongs of the Dhanasar framework. The request for evidence explained that the while the teaching profession is one of substantial merit, it did not have national importance stating, “In the same way that Dhanasar finds that a classroom teacher’s proposed endeavor is not nationally important because it will not impact the field more broadly, . . . the [P]etitioner has not shown [his] proposed endeavor, which is also that of a teacher, stands to sufficiently extend beyond his students to impact the industry or field more broadly.” (emphasis omitted).

In response, the Petitioner submitted further evidence about his proposed endeavor indicating he intends to use “his knowledge and experience as a [recreation and fitness studies teacher] to provide fitness programs, plans and routines for clients” by establishing a sports academy business, [redacted] in Florida. The Petitioner stated, “The company will specialize in providing Soccer, Volleyball, and Footvolley lessons, and Sports Consultancy, in general, among other sport-related services to customers in the U.S. market.” The Director found that the Petitioner’s proposed endeavor of establishing a sports academy business constituted a substantial change from his initially indicated proposed endeavor of being a post-secondary recreation and fitness studies teacher for an educational institution. The Director acknowledged the Petitioner’s proposal to establish a sports academy business but did not address its related evidence in any substantive way stating, “A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to [USCIS] requirements.” See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998). The Director found that the Petitioner’s initially proposed endeavor of being a post-secondary recreation and fitness studies teacher for an educational institution was not of national importance.

On appeal, the Petitioner does not address the Director’s finding that the updated proposed endeavor of establishing a sports academy business constituted a material change to the petition and was not considered in the Director’s decision. Instead, the Petitioner argues that his working in the physical education and health sector by establishing a sports academy business meets *Dhanasar*’s three prongs, including it having national importance under the first prong.

The record initially depicted the Petitioner’s endeavor as a post-secondary recreation and fitness studies teacher to a single employer, an educational institution. The Petitioner’s reply to the request for evidence and appeal did not enhance or clarify the Petitioner’s initially proposed endeavor as a post-secondary recreation and fitness studies teacher. Instead of clarifying the Petitioner’s proposed

endeavor, the evidence presents a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver.

USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. 8 C.F.R. § 103.2(b)(1). The Petitioner's plans to be an entrepreneur by establishing a sports academy business were presented after the filing date; as such, the revised endeavor cannot retroactively establish eligibility. If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The Petitioner has not provided a definitive and consistent description of his proposed endeavor that would allow for a meaningful analysis of whether that endeavor is one of substantial merit and national importance. For these reasons, the petition may not be approved.

The Petitioner generally contends on appeal that the Director "did not apply the proper standard of proof . . . , instead imposing a stricter standard, and erroneously applied the law" (emphasis omitted). The Petitioner further argues that the Director "did not give due regard" to the evidence submitted, specifically the Petitioner's business plan, evidence of work in his field, evidence that Petitioner is working to advance his proposed endeavor, letters of recommendation, and industry reports and articles.

The record includes the Petitioner's business plan to establish the sports academy business. Even if the proposed sports academy business contemplated in the business plan could establish eligibility, which it cannot, the Petitioner has not met his burden. Upon de novo review, the record does not show by a preponderance of the evidence that the Petitioner's proposed endeavor described in the business plan satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

The Petitioner argues that the Petitioner "intends to work in the physical education and health sector, by using his expertise and knowledge from over twenty . . . years of progressive experience" to "bring substantial benefits to the country's healthcare landscape, population health, and national economy. It will also train a new generation of how to live a healthier lifestyle to reduce the burden that the health crisis has created on the [United States]." The Petitioner argues that in his previous professional experiences, "he has successfully developed individuals to new health and fitness heights. This has allowed him to influence his country's healthcare and population's health activity positively, as he is beginning to do in the [United States]." To demonstrate the national importance of his proposed endeavor, the Petitioner describes in detail his professional experience, credentials, and achievements in the "physical education and health sector." He argues "his professional record mirrors how his line of work offers broad implications – both social and economic – to the United States, specifically through his functions within the education field."

However, the Petitioner's reliance on his professional experience, credentials, and achievements to establish the national importance of his proposed endeavor is misplaced. His professional experience, credentials, and achievements relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong. 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. See *id.* at 889.

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 the field more broadly. *Id.* at 893. The record does not demonstrate that the Petitioner’s proposed endeavor of establishing a sports academy specializing in soccer, volleyball, and footvolley lessons, and sports consultancy, will substantially benefit the field of physical education, as contemplated by *Dhanasar*: “[a]n 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.* The evidence does not suggest that the Petitioner’s proposed sports academy business would impact the physical fitness, recreation, or fitness studies fields more broadly.

The Petitioner further argues the successful management of his proposed business will benefit the United States economically by creating jobs, offering “competitive services, helping develop the country, and producing income for the U.S. economy.” The Petitioner argues that the business will impact the education services industry with a revenue of \$460,000, net profit within its first five years. He further argues that establishing the business in Florida in a “SBA HUBZone area . . . will help to fuel small business growth in historically underutilized business zones,” generate jobs for U.S. workers in an underutilized community, improve wages for U.S. workers, and help the local community. The business plan briefly explains that its office will be in an underutilized business zone in [REDACTED] Florida. The business plan mainly focuses on the Petitioner’s professional experience, credentials, and achievements; a market analysis of sports clinic industry, including opportunities and competition; intended marketing of the business; and projected financial plan.

However, the record does not sufficiently document the potential prospective impact, including the asserted economic benefits to Florida and the United States. The Petitioner has not provided corroborating evidence to support his claims that his business’ activities stand to provide substantial economic benefits to the underutilized area of Florida or the United States. The Petitioner’s claims that his proposed sports academy business will benefit the Florida or U.S. economy has not been established through independent and objective evidence. The Petitioner’s statements are not sufficient to demonstrate his endeavor has the potential to provide economic benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that \$460,000, net profit within its first five years rises to the level of national importance. The record lacks sufficient documentary evidence that his proposed job duties as the owner and physical education trainer of his business would impact the physical fitness, recreation, or fitness studies fields more broadly, rather than benefiting his business and his proposed clients. The Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor of establishing a sports academy business is of national importance.

The Petitioner further claims on appeal that the national importance of his proposed endeavor is evidenced in industry reports and articles. He argues that the reports and articles demonstrate the importance of physical education to improve the national health by decreasing “healthcare expenses, opioid abuse, and time spent away from school, work, and daily life, [sic] therefore improving the quality of living for the nation.” He further argues that his endeavor helps an industry having a national

shortage of knowledgeable and experienced professionals. We recognize the importance of fitness and physical education and related careers; however, merely working in the fitness and physical education fields or starting a sports academy business is insufficient to establish the national importance of the proposed endeavor. Instead, of focusing on the importance of an industry or the need for workers in a specific industry, we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Matter of Dhanasar*, 26 I&N Dec. at 889.

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. The industry reports and articles submitted do not discuss any projected U.S. economic impact, job creation, or health benefits specifically attributable to the Petitioner’s proposed endeavor.

We note that the record includes an expert opinion from [redacted] adjunct professor of business, entrepreneurship, and sports management at [redacted] College. The opinion includes an analysis of the national importance of the Petitioner being a physical education specialist stating, “[The Petitioner] would work in the United States in an area of substantial merit and national importance.” (emphasis omitted). The opinion explains that the United States has an issue with obesity and believes physical education specialists would be important to help address the obesity issue. However, the opinion’s focus on the need for physical fitness specialists to help an issue such as obesity and individual health does not demonstrate that the Petitioner’s specific endeavor may have a prospective impact in his field. The opinion does not focus on the Petitioner’s specific endeavor and it having a potential prospective impact on the U.S. economy or healthcare, or in the field of his proposed endeavor. Simply stating that his work would be in an area of importance is not sufficient to meet the “national importance” requirement under the *Dhanasar* framework.

If the proposed endeavor of establishing a sports academy business could establish eligibility, which it cannot, the Petitioner does not demonstrate that this proposed endeavor extends beyond his business and his future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as the owner and physical fitness specialist of his proposed sports academy business offers original innovations that contribute to advancements in his industry or otherwise has broader implications for his field. The economic and healthcare benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed business’ sports academy work and the claimed economic and healthcare results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner’s proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding his eligibility under the second and third prongs. 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 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 find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.