



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

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

In Re: 26375864

Date: DEC. 07, 2023

Appeal of Texas Service Center Decision

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

The Petitioner 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, 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 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.* Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, 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.<sup>1</sup> *Id.*

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<sup>1</sup> 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 USCIS may, as matter of discretion<sup>2</sup>, 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 indicates he proposes to work in the United States as an athletic trainer having worked as a physical education teacher, basketball coach, and sports manager in Brazil. The Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.<sup>3</sup> 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.<sup>4</sup>

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor 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 whether the proposed endeavor has national importance, we consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner initially submitted a professional plan and statement stating, “I intend to continue my career as an Athletic Trainer in public and private schools, sports centers and sports teams of all ages and levels. I want to focus on the preparation of young athletes to develop their motor skills and

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<sup>2</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).

<sup>3</sup> To demonstrate he is an advanced degree professional, the Petitioner submitted his diploma for the title of license in physical education from Universidade [redacted] Brazil; the corresponding academic transcripts; an academic evaluation; and letters from his previous employer. 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).

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

inculcate discipline and values that will help them inside and outside the sports world. . . . I have already been in contact with some teams that are willing to hire me . . . .” The initial petition included two letters offering the Petitioner jobs as a physical education and basketball coach and as a basketball coach.

The Director issued a request for evidence seeking further information and evidence that the Petitioner meets each of the three prongs of the Dhanasar framework. In response, the Petitioner submitted a statement revising his proposed endeavor by indicating that he and another individual intend to establish a sports school business for which he would be its chief executive officer and an athletic trainer. The Petitioner submitted a business plan stating that the business would be “a chain of schools that will provide an opportunity for girls and boys from low-income communities to learn fundamentals of soccer, basketball, and volleyball as well as team sports principles under expert instruction while improving their health and self-esteem and having fun in a team context.” The sports school business would offer sports classes and summer camps for children, motivational talks at local schools, workshops and tournaments to promote meetings with sports professionals, and social sporting events. The business’ first school would be in [redacted] Florida with future schools in [redacted] Florida and [redacted] Alabama.

The Petitioner did not include any specific plans or evidence about being an entrepreneur and starting a sports school business with his initial submission of the Form I-140. The Director’s decision focused on the Petitioner’s initially described proposed endeavor as an athletic trainer for public and private schools, sports centers, and sports teams. The Director did not address the Petitioner’s revised proposed endeavor as the chief executive officer and athletic trainer for his proposed new sport schools. The Director found that while the proposed endeavor has substantial merit, the Petitioner did not demonstrate his endeavor has national importance.

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 purpose of the request for evidence notice is to elicit further information that clarifies whether a petitioner has established eligibility for the benefit sought as of the time the petition was filed. See 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence notice, a petitioner may not make material changes to the petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998). The Petitioner cannot materially change the proposed endeavor after submitting his petition. 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 as at the time of filing.

The Petitioner’s reply to the request for evidence explaining his plan to establish a new business of sports schools constituted a materially different endeavor and changed the focus of the Petitioner’s endeavor from what he initially indicated in his petition. The Petitioner did not acknowledge or explain this material change. The Petitioner’s plan to establish a new business of sports schools will not be considered in this decision, and like the Director, we limit our decision to the proposed endeavor stated in the Petitioner’s initial petition.

The Petitioner maintains in the initial petition that his proposed endeavor as an athletic trainer for public and private schools, sports centers, and sports teams comports with the job duties and responsibilities for the “athletic trainer” occupation under the U.S. Department of Labor’s standard

occupational classification (SOC) code 29-9091. The Petitioner submitted a printout of the summary report for that SOC code. In the report, the U.S. Department of Labor states the job duties and responsibilities of “athletic trainers” as “Evaluate and treat musculoskeletal injuries or illnesses. Provide preventative, therapeutic, emergency, and rehabilitative care.” See U.S. Department of Labor, O\*NET Summary Report for "Athletic Trainers," <https://www.onetonline.org/link/summary/29-9091.00>. The Petitioner also provided reports and articles relating to athletic trainers, which explain the medical care and treatment provided by athletic trainers to athletes.

However, the athletic trainer occupation described by the U.S. Department of Labor, differs from the Petitioner’s intended occupation and proposed endeavor described in his professional plan and statement. Although the Petitioner uses the term “athletic trainer” and the SOC code 29-9091 as his intended occupation, his professional plan and statement describe a different intended occupation, to continue his career as a physical education coach and basketball coach for youth sports organizations and educational institutions. The record does not include evidence showing the Petitioner intends to provide the job duties or responsibilities attributed to athletic trainers, providing medical care or treatment to injured athletes.

The Petitioner describes his proposed endeavor by stating, “Ideally, with [sic] the approval of this petition, I will . . . offer my expertise to other teams and coaches. I have already been in contact with some teams that are willing to hire me, since they are interested in my profile and experience . . . so they can favor from my advance training methods and skills in discovering new talent to turn their teams more competitive.” As explained above, the Petitioner stated he intends “to focus on the preparation of young athletes to develop their motor skills and inculcate discipline and values that will help them inside and outside the sports world.” He further stated that he intends to be “responsible for training athletes or students in a sport by analyzing their performances, instructing in relevant skills and by providing encouragement.” The record also includes two letters from youth sports organizations offering to hire the Petitioner as a physical education and basketball coach and as a basketball coach.

The Petitioner’s description of his proposed endeavor does not align with the job duties and responsibilities of an athletic trainer as defined by the U.S. Department of Labor. Instead, the record developed at the time of filing indicates that the Petitioner’s proposed endeavor is to continue his career as a physical education coach and basketball coach for youth sports organizations and educational institutions, instead of as an athletic trainer. Based on the Petitioner’s description of his proposed endeavor as a physical education coach and basketball coach, we find that this proposed endeavor has substantial merit.

Counsel’s letter explains that the Petitioner’s proposed endeavor has national importance stating, “His proposed endeavor will have broad implications, as it is national in scope, and will produce significant national benefits, due to the ripple effects upon nationally important issues, such as health of children in particular, due to the rising childhood obesity rate, which has been deemed as a national problem by distinguished U.S. institutions and organizations, including the government.” While the impact of physical education and coaching on obesity and physical health attest to the substantial merit of the Petitioner’s proposed endeavor, it does not meet the Petitioner’s burden to establish that his continuing his career as a physical education coach and basketball coach for youth sports organizations and educational institutions has national importance.

On appeal, the Petitioner contends that the Director did not apply the proper standard of proof, instead imposed a higher standard, and erred by not giving “due regard” to the evidence submitted, including the Petitioner’s professional plan and statement, letters of recommendation, industry reports and articles. Upon de novo review, we find the Petitioner did not demonstrate by a preponderance of the evidence that his proposed endeavor satisfies the national importance element of Dhanasar’s first prong.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is “more likely than not” or “probably” true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989). Here, the Director properly analyzed the Petitioner’s documentation and weighed his evidence to evaluate the Petitioner’s eligibility by a preponderance of evidence.

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 *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner’s claims that his proposed endeavor **will** impact obesity in children and benefit U.S. healthcare “due to the ripple effects upon nationally important issues, such as health of children” 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 health 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. Also, without sufficient documentary evidence that his proposed job duties as a physical education coach and basketball coach would impact the physical education and youth sports industry more broadly rather than benefiting his proposed students and employers, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The Petitioner further argues on appeal that the Director did not discuss his unique ability to speak fluent Portuguese, Spanish, and English, which is of national importance when working with immigrant children. However, the Petitioner has not provided evidence to explain or demonstrate how his ability to speak three languages as a physical education coach and basketball coach will impact his field of physical education and youth sports more broadly rising to the level of national importance.

The Petitioner highlighted the importance of physical education coaching and basketball coaching for youth sports organizations and educational institutions by providing reports and articles focusing on the benefits of sports for children and at-risk youth; the benefits of physical education; the prevalence of obesity in the United States; the benefits of physical activity to prevent obesity in children; trends for youth sports; coaching youth sports; the benefits of community recreation centers; the importance of athletic trainers to prevent and treat injuries in youth athletes; athletic trainers providing healthcare services for athletes; and the shortage of qualified athletic trainers. While the reports and articles demonstrate the fields of physical education and youth sports coaching are important, they do not establish the national importance of the Petitioner’s proposed endeavor.

The Petitioner's emphasis on the high rates of childhood obesity in the United States and the need for children to participate in physical activity to improve their health does not render the work of an individual physical education coach and basketball coach nationally important under the Dhanasar framework. The articles and reports do not establish that the Petitioner's work as a physical education coach and basketball coach will impact the broader field or otherwise have implications rising to the level of national importance.

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 in the field. Matter of Dhanasar, 26 I&N Dec. at 889. Much of the Petitioner's evidence relates to the importance of the physical education and the youth sports fields, rather than the national importance of a specific proposed endeavor. The record does not support that the Petitioner's proposed work as a physical education coach and basketball coach for youth sports organizations and educational institutions to have wider implications in the fields of physical education and youth sports. While we agree that the fields of physical education and youth sports have significant merit, the evidence and arguments provided do not support a finding that the Petitioner's specific proposed endeavor has national importance.

The record includes an 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 educator stating, "[The Petitioner] would work in the United States in an area of substantial merit and national importance." (emphasis omitted). The opinion emphasizes the importance of physical education for the physical and mental health of students. The opinion explains the profession of physical education teachers and their importance to students' health. The opinion emphasizes that the Petitioner has the expertise to be a physical educator for students and would be supporting a nationally important field of physical education. However, the opinion's focus on the importance of physical education teachers to the physical and mental health of students 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 health of U.S. children, or in the field of his proposed endeavor. Simply stating that his work would be in an area of importance for the health of U.S. children is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The Petitioner does not demonstrate that his proposed endeavor extends beyond his future students and employers to impact the field or any other industries or the health of U.S. children 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 physical education coach and basketball coach for youth sports organizations and educational institutions offers original innovations that contribute to advancements in his industry or otherwise has broader implications for his field. The health benefits that the Petitioner claims depend on numerous factors and the Petitioner did not offer a sufficiently direct evidentiary tie between his physical education coaching and basketball coaching for youth sports organizations and educational institutions and the claimed health benefits that would rise to the level of national importance.

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. 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.