



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

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

In Re: 28514279

Date: NOV. 27, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a special education teacher, 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 immigration classification. Section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner's endeavor would have national importance, that she is well-positioned to advance that endeavor, or that, on balance, it would benefit the United States to waive the job offer requirement.<sup>1</sup> 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest. Section 203(b)(2) of the Act.

Neither the statute nor the pertinent regulations define the term "national interest." *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that:

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<sup>1</sup> The Director concluded that the Petitioner's U.S. master's degree qualifies her for the EB-2 classification as an advanced degree professional, which the record supports.

(1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well-positioned to advance the proposed endeavor; and (3) that, on balance, it would benefit the United States to waive the requirements of a job offer and thus of a labor certification.

## II. ANALYSIS

### A. Substantial Merit and National Importance

The first prong of the *Dhanasar* test, substantial merit and national importance, focuses on the specific endeavor the Petitioner intends to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner states that she will teach special education classes in U.S. public schools and support the growth of special education as a profession with activities including research and eventually teaching at the graduate level.

The Director issued a request for evidence (RFE) requesting, among other things, further documentation showing the endeavor's national importance. Upon reviewing the Petitioner's response, the Director found that while the endeavor had substantial merit, the Petitioner had materially changed that endeavor in her RFE response and so could not establish its national importance and meet the first *Dhanasar* prong. On appeal, the Petitioner contends that she did not materially change her endeavor. We agree. However, she also has not provided sufficient documentation about the specifics of that endeavor or its impact to establish its national importance.

#### 1. The Petitioner Did Not Materially Change Her Endeavor

A petitioner must establish eligibility for the benefit sought at the time of filing. 8 C.F.R. § 103.2(b)(1). Therefore, petitioners 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. *Matter of Izummi*, 22 I&N Dec. 169, 175 (BIA 1988) (citing *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r. 1971)). According to the Director, the Petitioner's RFE response constituted such a change because it changed her proposed activities from teaching public school students with special needs and eventually teaching at the graduate school level to the development of special education curricula and training other teachers "at a public organization." Upon review, we will withdraw this finding.

In her initial filing, the Petitioner stated that her "goal is to teach special needs students in the public school system and to support the growth of special education, as a profession, in the United States," and that she will "eventually teach at the graduate level in hopes of increasing the number of educators in the field of early childhood special education." She further stated that she has a "special interest" in curriculum development for early childhood mathematics education for students who are deaf and hard of hearing, that she is working on a website to share her work in this area with educators and families of such students, and that she intends to conduct research in this area in the future.

In her RFE response, the Petitioner provided a new statement, describing her current work as a public school special education teacher and stating that her "future aspiration is to work towards . . . developing special education curriculum and educate and train other special education teachers at a public organization such as at a graduate school or a school district and eventually at the California Department of Education or even ultimately at the U.S. Department of Education." While this new

statement emphasizes the Petitioner's future aspirations over her current public school teaching work, the record does not support a finding that it materially changes her endeavor. Furthermore, while we note that the Petitioner did not specifically mention working at a government agency in her initial filing, this does not constitute a material change from her previous broadly-stated goals of training other teachers and promoting her profession in the United States. Therefore, we will withdraw the Director's finding that the Petitioner materially changed her endeavor in her RFE response. However, it is this same lack of specific information about her future activities that renders the Petitioner ineligible for the first *Dhanasar* prong.

## 2. National Importance

The record does not establish that the Petitioner's endeavor will have an impact rising to the level of national importance. On appeal, as in her underlying case, the Petitioner emphasizes the importance of early childhood special education for children with special needs. However, these factors relate to her endeavor's merit, not its national importance, which is a separate consideration under *Dhanasar*. *Matter of Dhanasar*, 26 I&N Dec. at 889. The relevant question when determining national importance is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Id.* at 889-90. For example, an endeavor may qualify if it has national implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. *Id.*

In *Dhanasar*, the Petitioner's work as a science teacher was found to have substantial merit but did not qualify him under the first prong because the evidence did not show how that work would impact the field of science education more broadly. *Id.* at 893. Similarly, the record here includes support letters written on the Petitioner's behalf by her coworkers, graduate school instructors, and parents of students she has taught. These letters speak very highly of the Petitioner's skill, knowledge, and dedication, and illustrate the impact she has had on her students and on others in her school district. However, the support letters and the rest of the record do not document any impact the Petitioner has had or will have on the broader field of special education beyond her immediate professional circle.

The Petitioner's appeal also reiterates her petition's claim that her endeavor is nationally important due to the shortage of special education teachers in the United States and provides extensive materials documenting the need for more workers in this field. However, she has not established how her individual special education teaching activities will resolve this shortage or impact it on a level rising to national importance.<sup>2</sup> Furthermore, while she states she intends to teach on a graduate level in order to train more teachers, she does not provide any specific information about when she will do so, what subjects she will teach, or any other information indicating how having one more graduate instructor in the United States would impact the number of new special education teachers on a national level.

The Petitioner points out that for her master's degree, she authored an early childhood mathematics education guidebook for the families of children who are deaf or hard of hearing, and claims in one of her cover letters that "it has been well utilized by parents as well as other teachers . . .". To support

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<sup>2</sup> We further note that the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. See *Matter of Dhanasar*, 26 I&N Dec. at 885; see also 20 C.F.R. § 656.1.

this claim, she provides support letters from others in her field. The letter from Professor A-F- [redacted] [redacted] University, one of the Petitioner's graduate school instructors, states that the guidebook "is truly significant as all too often families are unsure how to support emerging math abilities," especially in cases where children are deaf or hard of hearing. The letter from L-B- of the [redacted] Unified School District, one of the Petitioner's former coworkers, states that she has "no doubt" that the guidebook "should enhance students' language development." However, contrary to the Petitioner's claims, these letters do not indicate that her guidebook has actually been used by others in the field. There is no indication that the guidebook has been published or distributed, and the Petitioner does not name any specific plans to do so. It is therefore not apparent how this would influence the Petitioner's field on a national level.

In her RFE response, the Petitioner also provided a letter regarding a city project to provide interdisciplinary training for early childhood special educators and social workers in order to address labor shortages in both fields. The letter states that the Petitioner reviewed the project and approves of it, but does not indicate that she will have any role in the project's work. It is therefore not apparent how the project's prospective impact would be attributable to the Petitioner's endeavor. Additionally, while the record indicates that the Petitioner is a member of her school district's Early Childhood Special Education Council, there is no documentation establishing that this group's work has an effect beyond that school district. The record does not document what impact the Petitioner's endeavor would have that would extend beyond her immediate circle of students and employers to affect the broader field of special education on a nationally important level.

An endeavor may qualify under the first prong if it has significant potential to employ U.S. workers or have other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 889. The Petitioner claims that her endeavor will aid the U.S. economy, noting, among other things, that a lack of affordable childcare impacts worker productivity, that the availability of early childhood education increases local property prices, and that early childhood education leads to better educational outcomes which save money for school districts. As noted above, an endeavor's national importance is determined by the impact that is specifically attributable to that endeavor, not the collective impact of the entire field that endeavor is in. *Id.* The Petitioner has provided no documentation quantifying any specific economic impact her individual endeavor will have. As such, she has not established that the endeavor will have the kinds of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.*

The record does not establish that the Petitioner's endeavor will have national importance. While the Petitioner's ineligibility under the first *Dhanasar* prong would normally be dispositive of the case, we have withdrawn the portion of the Director's decision regarding a material change in the Petitioner's proposed endeavor. As such, we will analyze the Petitioner's qualifications for the second *Dhanasar* prong, as well.

#### B. Well-Positioned to Advance the Proposed Endeavor

The second prong of the *Dhanasar* test examines the noncitizen's ability to advance their proposed endeavor by considering "factors including, but not limited to: the individual's 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.” *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Director concluded that while the Petitioner is a capable and dedicated teacher with the education, skills, and knowledge to advance her endeavor, the evidence did not establish the presence of any other favorable factors, such as a record of success in related or similar efforts or a plan for future activities. On appeal, the Petitioner states that her educational credentials and work experience make her well-positioned to advance her proposed endeavor, and that this is evidenced by the various letters of support submitted on her behalf. Upon review, the Petitioner has not overcome the Director’s denial grounds.

As noted by the Director, the Petitioner lacks a plan or model for future activities. She states that she would like to train other teachers at some unspecified future point, but does not provide any timeline for beginning this activity or any information about what kind of training she will give. Furthermore, beyond the decision of the Director, we note that while the Petitioner states that she will teach at the graduate school level, postsecondary teachers are typically required to have a doctoral degree in their fields, a credential that the Petitioner lacks.<sup>3</sup> The Petitioner does not mention this issue or state any plan to earn a doctoral degree.

Similarly, while we acknowledge the Petitioner’s success performing the pedagogical, curricular, and mentoring duties of a special education teacher, she has not demonstrated a record of success in curriculum development, instructing other teachers, conducting research, or related activities on a scale extending beyond one classroom or school district. Beyond stating in her RFE response that she would like to work for the California or U.S. Department of Education at an unspecified time, the Petitioner also does not state any specific plan for such activities or provide any evidence that these government agencies are interested in her endeavor. *Matter of Chawathe*, 19 I&N Dec. at 376 (explaining that the preponderance of the evidence standard requires petitioners to submit relevant, probative, and credible evidence to show the fact to be proven is “probably” true).

While the Petitioner is prepared to continue working as a public school special education teacher, the record does not establish that she has planned for or made any progress towards the other activities she names as part of her endeavor. Nor does it establish that she has a record of past success in similar activities or that she has solicited interest in the endeavor from relevant entities. As such, she has not established her eligibility under the second *Dhanasar* prong. *Id.*

### III. CONCLUSION

Because the Petitioner has not met the requisite first or second prong of the *Dhanasar* test, we need not address her eligibility under the third prong and hereby reserve this issue. *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 an applicant did not otherwise meet their burden of proof).

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<sup>3</sup> Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Postsecondary Teachers (Sept. 06, 2023), <https://www.bls.gov/ooh/education-training-and-library/postsecondary-teachers.htm#tab-4>.

The Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

**ORDER:** The appeal is dismissed.