



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

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

In Re: 28282979

Date: OCT. 2, 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 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 EB-2 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, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a 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.

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. 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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

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 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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to her proposed endeavor, the Petitioner initially indicated that she intended to continue to work in the United States “as a special education teacher.”² She stated:

[redacted] Military Academy is the largest Air Force Junior Reserve Officer Training Corps (AFJROTC) program in the Western United States, providing an array of educational opportunities to its students. At [redacted] Military Academy, I seek to work as a special education teacher, helping students with disabilities learn how to manage their conditions and use them to their advantage. I would help integrate students with special needs into regular classrooms and teach all students to better understand what disabilities are and how to control them and interact with them.

In response to the Director’s request for evidence (RFE), the Petitioner provided further information about her proposed endeavor:

Since . . . August 2022, I have worked at [redacted] Elementary School as a special needs specialist. As a special needs specialist, my responsibilities include:

- Working with students who have a wide range of special needs and disabilities
- Applying appropriate curricula and assigning activities that are specific to each student’s abilities and needs
- Assisting students in their academic, social, and behavioral development
- Developing Individualized Education Programs (IEPs)
- Going over the IEP with the child’s parents, general education teachers, and school administrators
- Keeping parents updated on progress and making recommendations to promote learning in the home
- Coordinating with social workers, physical therapists, school psychologists, administrators, and other teachers

² The record includes documentation of a job offer to the Petitioner from [redacted] Military Academy for the position of Special Education Teacher. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her proposed teaching positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* framework.

At [] Elementary School, I have been working with children who have a variety of special needs, including physical disabilities and mental deficiencies. I have to use my specialized knowledge and skills to not only educate the children, but also to help them succeed in their daily activities.

The Petitioner's RFE response included a letter from E-F-, Special Education Teacher Leader at [] [] Elementary School, stating:

As a Special Needs Specialist, [the Petitioner] is responsible for working with students who have a wide range of special needs and disabilities, helping them with their academic, social, and behavioral development, and coordinating with social workers, therapists, and parents to ensure students are learning to the best of their capacities. [The Petitioner] provides one-on-one and group sessions to help students not only develop their social and academic skills individually, but also to learn how to conduct themselves in social settings and group learning sessions. [The Petitioner] is more than just an educator; she helps students with everyday functional skills as well as educational learning, such as zipping up zippers, communicating more effectively, and managing behavioral difficulties. [The Petitioner] also help special needs students that are in regular classes, helping them bridge the gap between their disabilities and functioning under everyday circumstances.

Furthermore, the Petitioner submitted information about shortages of special education teachers in the United States, the percentage of Hispanic students with disabilities, U.S. special education teacher demographics, the history of special education in our country, the value of special education for children with disabilities, the increase in the childhood disability rate in 2019 compared to 2008, the economic costs of childhood disability, and special education statistics and trends. In addition, the record includes articles discussing special education services in the United States, the increase in developmental disabilities among children in our country, the Biden Administration's initiative to boost disability services, the percentage of children in our country with special health care needs, the costs of excluding persons with disabilities, and learning setbacks attributable to the COVID-19 pandemic. The Petitioner also provided information about the Individuals with Disabilities Education Act (IDEA), the number of students who receive services under the IDEA, declines in student mathematics and reading scores attributable to COVID-19, the pandemic's setbacks to schooling, the effect of COVID-19 on special education students, the current state of special education in the United States, and the high demand for bilingual special education teachers in []. The record therefore demonstrates that the Petitioner's proposed endeavor aimed at teaching students with special needs has substantial merit.

Additionally, the Petitioner presented letters of support from A-M-A-, A-H-M-C-, C-A-C-S-, E-P-O-R-B-, S-A-O-, and M-C-A-S- discussing her special education capabilities and teaching experience. The Petitioner's skills, knowledge, and prior work in her field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner also provided "Expert Opinion Letters" from Dr. N-S-A-, a professor of psychology at [] University; Dr. T-G-Z-, a professor of education at [] University; and Dr. J-D-, an

associate professor of sociology at University [REDACTED], in support of her national interest waiver. Dr. N-S-A-, Dr. T-G-Z-, and Dr. J-D- contend that the Petitioner's proposed work is of national importance because her generic occupation of special education teacher and the field in which she works stand to offer national or global implications, have significant potential to employ U.S. workers, provide substantial positive economic effects, impact national government initiatives, or broadly enhance society welfare. The issue here, however, is not the national 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." *Id.* at 889. The letters from Dr. N-S-A-, Dr. T-G-Z-, and Dr. J-D- do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work as a special educator offers broader implications in her field, enhancements to U.S. societal welfare, or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of her proposed endeavor. The Director stated that the Petitioner had not demonstrated that her undertaking stands to have broader implications in the field, enhancements to societal welfare, significant potential to employ U.S. workers, or other substantial positive economic effects.

In her appeal brief, the Petitioner asserts that her proposed endeavor has national importance because the United States is experiencing "a shortage of special education specialists." The Petitioner also points to the letters from Dr. T-G-Z- and Dr. J-D- mentioning the "shortage of special needs educators" and "personnel shortages in special education." We are not persuaded by the argument that the Petitioner's proposed endeavor has national importance due to the shortage of professionals in her field. Here, the Petitioner has not established that her proposed endeavor stands to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner contends that her proposed work "has potential to impact the education sector, welfare, and economy of the United States." She asserts that "[s]he is making a differential work, that has the prospect to expand to other states, churches, schools."³ The Petitioner also argues that "she is offering a service that the U.S. government itself favors, as it has implemented multiple federal initiatives to obtain the contributions of national importance."

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." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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.

³ The record does not include supporting evidence to corroborate the Petitioner's claim regarding the prospective expansion of her work.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. While the Petitioner’s statements reflect her intention to provide valuable educational services to her students with special needs and disabilities, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. The Petitioner has not shown that her proposed work as a special education teacher has broader implications for her field, as opposed to being limited to the students at the school where she intends to teach. Nor has she demonstrated that her instructional activities offer benefits that extend beyond her school to impact the field of special education or U.S. societal welfare more broadly at a level commensurate with national importance. Likewise, 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 his field more broadly. *Id.* at 893.

Furthermore, while the Petitioner contends on appeal that her proposed endeavor stands to benefit the U.S. economy, she has not demonstrated that her undertaking has implications beyond the students under her tutelage. Nor has the Petitioner shown that her proposed work has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not indicate that the benefits to the regional or national economy resulting from the Petitioner’s teaching activities would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

For the aforementioned reasons, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of her 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 this issue is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. 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 conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.