



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

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

In Re: 22646725

Date: DEC. 7, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an attorney and social responsibility expert, seeks second preference 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 Texas Service Center denied the petition, concluding that the Petitioner qualifies as a member of the professions holding an advanced degree, but that the record did not establish that a waiver of that visa classification's job offer requirement would be in the national interest. The Director also dismissed the Petitioner's subsequent motion to reconsider that decision. On appeal, the Petitioner asserts that the Director did not consider all of the evidence in the record.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
  - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884. *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion,<sup>1</sup> grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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.<sup>2</sup>

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

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<sup>1</sup> See *Poursina v. USCIS*, 936 F.3d. 868 (9<sup>th</sup> Cir. 2019), finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature.

<sup>2</sup> To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, they must go beyond demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise to establish eligibility for a national interest waiver. See *Dhanasar*, 26 I&N Dec. at 886 n.3.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether they are well positioned to advance the proposed endeavor, we consider 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.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.<sup>3</sup>

## II. ANALYSIS

The Petitioner is an attorney and social responsibility expert. He submitted a diploma showing that he earned a professional title of attorney degree from [redacted] University [redacted] in Venezuela 1999. The Director determined that he therefore qualifies as a member of the professions holding an advanced degree. Upon review we note that the Petitioner did not submit official transcripts for these degrees, or an academic evaluation regarding their equivalency to U.S. degrees. Nevertheless, we reviewed the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. See generally American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, <https://www.aacrao.org/edge> (last visited Nov. 4, 2022). The database indicates that the professional title degree is comparable to a first professional degree in law in the United States, which is a juris doctorate degree. As the Petitioner has established that he qualifies as a member of the professions holding an advanced degree, the sole remaining issue is whether he merits a national interest waiver.

### A. Substantial Merit and National Importance of the Proposed Endeavor

As noted above, in the first prong of the *Dhanasar* framework, we consider the specific endeavor proposed by the petitioner and its potential prospective impact. Here, the Petitioner initially provided a very broad and vague description of his proposed endeavor, including interacting with people on the streets, working with various charitable institutions to create awareness, creating educational programs about family values and business ethics, counselling companies on business models to make them socially accountable, and promotion of environmental campaigns. These activities would be conducted under the trademark of [redacted] which the Petitioner describes as an "inspirational movement."

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

In responding to the Director's request for evidence (RFE), he submitted a business plan for [REDACTED] [REDACTED], a Florida business he and his spouse incorporated on [REDACTED] 2021. The plan explained that the goals for this company would be to promote family values, work-life balance, environmental projects and aid for the homeless; provide child education in "principles and values"; and promote social responsibility and volunteerism. The company is to generate income through selling books, providing online and in-person education courses, personalized counselling and professional service, television and radio shows, and conferences and speeches. The plan also indicates that the company would be active on social media and blogs.

As summarized in part by the Director in his initial decision, the record indicates that the Petitioner's proposed endeavor encompasses activities with his family's [REDACTED] movement, which includes promoting family values through social media posts, television shows, and blogs; teaching online courses on civility and manners; and coaching youth sports. The record also includes evidence regarding his spouse's activities as a social media influencer and author providing advice on homeschooling and other parenting topics, but despite her use of the [REDACTED] name and logo, the Petitioner's involvement with these activities is not apparent from the evidence.

The Director initially concluded that the Petitioner's proposed endeavor was of substantial merit, but did not provide an analysis explaining this conclusion. To the extent that the Petitioner's proposed activities focus on promoting civility, volunteerism, and serving others in the community, we agree that it has substantial merit in the area of culture.<sup>4</sup>

Turning to the issue of the proposed endeavor's national importance, the Director noted in his initial decision that the Petitioner had not submitted evidence showing that his endeavor would have broader implications in the field of social responsibility, and that the impacts of his coaching and other volunteer activities did not go beyond his local community. In addition, the Director concluded that the effects of his social media activity, blogs, and television shows would not extend beyond his followers or viewers.

On appeal, the Petitioner asserts that the Director overlooked evidence in his previous decisions, particularly that submitted in response to the Director's RFE, which included several letters from religious officials, former coworkers, family acquaintances and others in his local community. These letters primarily describe the Petitioner's previous volunteer and pro bono activities in Venezuela and the United States. For example, G-G-M-, an executive at [REDACTED] writes that while employed by the company, the Petitioner created a project for his work unit to provide pro-bono advice on legal and security matters to communities in Venezuela, and also participated in waste collection projects. In another letter, M-G- of S-C- Catholic Church notes that the Petitioner is a regular attendant at services and volunteers as an usher and in fundraising activities. The Petitioner states that these letters show that he "had indeed played a National Importance [sic] leading and critical role in the field of Social Responsibility for many years." However, as stated above, the focus in the first prong of the *Dhanasar* framework is the potential prospective impact of the proposed endeavor, whereas

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<sup>4</sup> To the extent that the Petitioner's proposed endeavor involves evangelism, he has not submitted evidence which establishes that this activity would be of substantial merit in business, entrepreneurialism, science, technology, culture, health, education or any similar area. We will therefore focus on the remainder of his proposed endeavor in our analysis.

evidence relating to the Petitioner's previous activities, such as these reference letters, may support his positioning to advance his endeavor under *Dhanasar*'s second prong.

Other letters highlighted by the Petitioner on appeal include one from Professor H-J-F- of the University of M-, who states that he has known the Petitioner since he was a child. Professor H-J-F- notes that the Petitioner gets joy from pursuing his social responsibility and work-life balance movement, but the letter does not support or mention the national importance of this work. Another highlighted letter was written by P-A-, Director of V-A- located in [REDACTED]. She indicates that the Petitioner and his family regularly provide clothing and other items to her organization to help Venezuelan immigrants in the area in need, and that she is also aware of FSA's activities to provide food and clothing to the homeless in the local area. While the Petitioner's philanthropy and volunteer service are commendable, there is no indication in this letter that supports their broader impact in the area of social responsibility in the United States.<sup>5</sup>

The Petitioner also asserts on appeal that his "journey related with education, teaching, coaching, pro-life and pro-environment campaigns, TV shows to expand knowledge about critical social welfare issues, etc., will substantially benefit in a National Importance [sic] scale US economy in the short, medium and long term." However, the business plan for [REDACTED] which he submitted in response to the Director's RFE did not provide projections for revenue or job creation, limiting its quantifiable goals to social media followers and subscribers. Further, the record does not include any other documentary evidence to support the Petitioner's claims of benefit to the local or national economy.

We note that the Petitioner states that similar cases to his have been approved. The AAO's non-precedent decisions, redacted copies of which are publicly available, are not published as a precedent and therefore are not binding on USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. The Petitioner asserts that one petition was approved that involved "an entrepreneurial enterprise that establishes tutoring instruction learning centers throughout the United States," but he does not provide a citation and the record does not include any evidence regarding this petition which would support the national importance of his proposed endeavor.

Another non-precedent decision mentioned by the Petitioner on appeal, *Matter of E-C-H-* (AAO Dec. 27, 2016), involved a consultant who proposed to work with non-profit and governmental organizations to improve services to U.S. veterans. We sustained that appeal in part because we found that the national importance of this endeavor was supported by expert letters from senior military, business, and philanthropic organizations describing the importance of programs for U.S. troops transitioning to civilian life, as well as media and other evidence describing gaps in the services offered to veterans. While the Petitioner asserts that [REDACTED] would similarly provide service to "an important segment of society in this Nation (American families, immigrants, Hispanic communities and minorities, homeless and working force)," there are several factors which distinguish his petition from *Matter of E-C-H-*. First, as shown in the quotation above, the target of the services the Petitioner

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<sup>5</sup> All of the reference letters in the record have been reviewed and considered, including those not specifically mentioned in this decision.

proposes to provide is much broader, and therefore more vague. So too is the nature of the proposed services, which according to the Petitioner touch on areas including drug addiction, divorce, homelessness, immigration, garbage collection and recycling, public health, social welfare, values and principles, and work-life balance. Second, the national importance of the petitioner's proposed endeavor in *Matter of E-C-H-* was well documented, including letters from several experts clearly expressing the importance of his work, and documentation of the impact that his work could have at the national level. Here, as described above, the reference letters submitted primarily focus on the Petitioner's previous activities as an attorney, volunteer, church member, and local television show host, and the record lacks sufficient documentary evidence showing the potential broader impact of his proposed endeavor. As such, the instant petition is distinguishable from that in *Matter of E-C-H-*.

We agree with the Director and find that the Petitioner has not established that his proposed endeavor is of national importance, and that he does not satisfy the first prong of the *Dhanasar* national interest waiver analytic framework.

#### B. The Positioning of the Petitioner to Advance the Proposed Endeavor

In the second prong the focus of our analysis shifts to the petitioner and their positioning to advance their proposed endeavor, and we look at several factors in making this determination. The Director found in his initial decision that the Petitioner met this prong of the *Dhanasar* framework. We withdraw that conclusion for the reasons given below.

Our decision in *Dhanasar* lists several non-exclusive factors to be considered in determining whether a petitioner is well positioned to advance their proposed endeavor. The first focuses on evidence of the individual's education, skills, knowledge and record of success in related or similar efforts. Here, we noted above that the Petitioner earned a professional title of attorney degree from [redacted] in Venezuela in 1999, which shows that he qualifies as a member of the professions holding an advanced degree. The record also includes evidence that he was employed as an attorney in Venezuela for several years. However, as the Petitioner's proposed endeavor does not include providing legal services, he has not shown that this education and experience has bearing on his eligibility under the second prong.

Per the Petitioner's RFE response, his proposed endeavor is centered upon the setup and operation of [redacted] through which he would carry out the services previously discussed. A small section of the business plan he submitted discusses making a profit through e-learning education courses, books, personalized counseling, and television and radio shows, and another section lists production of kits for activities such as travelling with children, homeschooling, education in sports and health for communities, and home improvement. But the record does not include evidence indicating that the Petitioner has experience as an entrepreneur, or as an educator or (non-legal) counselor. Although the evidence shows that his wife has authored a guide about homeschooling, and what appear to be social media pages provide some evidence of online and in-person courses teaching manners to children, the Petitioner's involvement in this work is not specified. Further, even assuming that he did collaborate with his spouse in these projects, the record lacks evidence which would show a record of success in this type of education. For instance, although the homeschooling guide is (or was) available for sale on Amazon.com, the record does not include evidence regarding sales or other measures of success.

Another factor relating to the second prong listed in *Dhanasar* considers the interest of potential investors, clients, or other relevant individuals or entities in the proposed endeavor. Here the evidence suggests that children have participated in the online and in-person manners classes, but no figures or projections have been provided regarding future classes, or a proposed schedule of the timing or frequency of such classes. In addition, the Petitioner's social media figures and statistics presented in the evidence are not supported by evidence showing that they reflect a sufficient level of interest in the his proposed endeavor. While *Dhanasar* is clear that petitioners are not required to demonstrate that their endeavors are more likely than not to succeed, the record does not demonstrate by a preponderance of the evidence that he is well positioned to advance his endeavor.<sup>6</sup>

We acknowledge that the reference letters show that the Petitioner has participated in charitable activities in the past, and led such activities during his employment with [REDACTED] on a pro bono basis. In addition, the evidence regarding his hosting of a local television show demonstrates that he is capable of continuing to do so at that level. However, the evidence is not sufficient to establish that the Petitioner is well positioned to advance the broad range of goals he proposes for [REDACTED]. We thus disagree with the Director and conclude that he does not meet the second prong of the *Dhanasar* analytical framework.

### III. CONCLUSION

The Petitioner has established his eligibility as a member of the professions holding an advanced degree, but has not shown that his proposed endeavor is of national importance or that he is well positioned to advance that endeavor. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in *Dhanasar* would serve no meaningful purpose.

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

As the Petitioner has not met the requisite first and second prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.

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<sup>6</sup> *Dhanasar*, 26 I&N Dec. at 890.