U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43781259

Date: AUG. 13, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, a musician and music teacher, seeks classification as a member of the professions holding an advanced degree. *See* 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 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. 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.

USCIS denied the petition, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. The matter is now before us on appeal under 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 qualify for a national interest waiver, a petitioner must first show eligibility for the underlying EB-2 visa classification, as either an advanced degree professional or an alien of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

If a petitioner establishes 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. *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,[1] grant a national interest waiver if the petitioner demonstrates that: (1) the proposed endeavor has both substantial merit and national importance; (2) the alien is well positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer requirement would benefit the United States.

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

II. ANALYSIS

The Petitioner earned a bachelor's degree in contemporary music from [redacted] in [redacted] in 2006. He has performed as a drummer in various settings and he established his own [redacted]. He has also taught elsewhere.

USCIS concluded the Petitioner qualifies as a member of the professions holding a bachelor's degree and post-baccalaureate experience equivalent to a master's degree under 8 C.F.R. § 204.5(k)(2). 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. USCIS determined that the Petitioner had established the substantial merit of the proposed endeavor, but had not otherwise satisfied the three prongs of the *Dhanasar* national interest test.

The Petitioner stated:

> The proposed endeavor consists of launching the [redacted] with the mission of transforming lives through percussion and motion, a model designed to deliver **non-pharmacological**, body-based **programs** for populations facing cognitive, emotional, and social vulnerability. This center introduces a novel, structured, and scalable public health resource that fills a critical gap in existing U.S. therapeutic programs, particularly in its unique integration of culturally adaptable rhythmic programs with neuroscience and movement for individuals facing challenges related to stress, trauma, and learning difficulties.
>
> ***This initiative is not a music education program, nor does it aim to teach musical performance. Rather, it utilizes body percussion, rhythm, and structured movement – grounded in neuroscience frameworks and supported by peer-reviewed research*** . . . – as tools to improve executive function, emotional regulation, motor coordination, and social cohesion.
>
> The model is structured for national implementation in high-impact communities, beginning with [redacted] as an initial hub, and scalable to other U.S. regions where mental health, addiction, and social integration challenges persist.

(Emphasis in original, evidentiary citations omitted.)

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.*

In his initial statement, the Petitioner stated that his "project provides complementary solutions for populations affected by Post-Traumatic Stress Disorder (PTSD), addiction, Attention Deficit

Hyperactivity Disorder (ADHD), and age-related cognitive decline. . . . This project also directly addresses the alarming rates of opioid-related deaths." The Petitioner also cited statistics about "mental health conditions," "autism spectrum disorder," and "severe staffing shortages" at nursing homes. The Petitioner stated that his "endeavor responds to that gap." But the Petitioner also stated: "The term 'Therapy' in the name is used in a non-clinical, educational, and preventive context, the endeavor does not involve medical diagnosis or treatment and is not presented as clinical therapy."

USCIS concluded that the Petitioner had established the substantial merit of the proposed endeavor.

In determining national importance, the relevant question is not the importance of the industry or profession in which the alien will work; instead 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 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.

The Petitioner must establish the national importance of his specific proposed endeavor, rather than the national importance of problems that the endeavor seeks to address. The relevant question is not how many people are affected by, for instance, PTSD or drug addiction, but rather how many of those people the proposed endeavor will directly help, and to what degree.

However beneficial the Petitioner's methods may be for his clients, the Petitioner must establish broader implications than the impact on a limited number of individual customers. *See Matter of Dhanasar*, 26 I&N Dec. at 893 (concluding that the petitioner had not shown that his intended mentoring of individual students would impact his field more broadly).

The Petitioner asserted that, after starting operations in the [redacted] area "as the initial pilot site, the program is expressly designed for replication across U.S. regions." The Petitioner also stated that the proposed endeavor's "model is structured for national implementation . . . and scalable." The business plan submitted with the petition indicates that the operation can be "[e]xpand[ed] by opening more Centers in strategic locations." But the business plan provides few details about the structure of the model and how the expansion would occur.

An "Implementation Timeline" in the business plan identifies "development of educational materials" as a future step that the Petitioner has not yet taken. Therefore, the record does not show that the Petitioner had fully formulated and structured those materials at the time he filed the petition.

Even then, each location would serve a limited number of local clients. The claimed national importance of the proposed endeavor rests on the expectation that the Petitioner's planned centers would expand to such a degree that they would have a significant, measurable impact on the problems the endeavor seeks to address.

The Petitioner submitted several expert opinion letters from therapists and artists. While these letters identify important issues that the Petitioner seeks to address, they do not provide any details about how the endeavor would have an impact on a scale that reaches the level of national importance.

One of those letters is from percussion educator and music therapist [redacted], a professor at [redacted], who stated that the Petitioner's [redacted] is a meticulously designed initiative," and that "[p]ilot programs cited in his proposal demonstrate 90% participant retention rates, a testament to the model's effectiveness." The Petitioner's "project proposal" in the record does not cite any pilot projects that the Petitioner has undertaken; he stated that "this methodology has not yet been systematically implemented." The statistics cited by [redacted] evidently derive from previous studies undertaken by others.

The Petitioner asserted that his proposed endeavor uses the term "therapy" in a non-medical, non-clinical context which apparently would not require specific professional credentials. But to establish the effectiveness of rhythmic therapy, he cited statistics that appear to derive formal clinical studies. The Petitioner has not shown that the less formal setting described for his own proposed endeavor would yield results comparable to those in the studies he cited.

Furthermore, the Petitioner contended that his "project constitutes a unique model" that he developed himself. He did not show that researchers used his model in the published studies he cited. To whatever extent the Petitioner's new model differs from methods already in use, the burden is on him to show that the effectiveness rates demonstrated in earlier studies would apply to his new model. Without evidence to that effect, the Petitioner has not established the national importance of an endeavor using his new model.

In terms of employment impact, a business plan in the record indicates: "The center will initially operate with a team of five professionals: the project leader (myself), one administrative manager, and three assistants with complementary functions." Two of these assistants would handle administrative tasks, while "[t]he third assistant – and potentially more than one – will actively deliver sessions based on non-clinical rhythmic programs and body percussion techniques, applying the methodologies developed and taught by the project leader." This information does not indicate that the Petitioner's proposed centers would employ a significant number of people in any given location.

In a request for evidence, USCIS acknowledged the Petitioner's initial evidence but stated that the Petitioner had not established the broader impact of the proposed endeavor.

In response, the Petitioner stated that his "methodology has already been implemented in multiple formats (public institutions, private academy, group and individual programs) for more than a decade," and that he has already had a "leadership role in a national-level social and community program involving large populations of youth." The Petitioner referred here to his prior activities with his own drumming academy and with a project called [redacted], which translates to [redacted]

The submitted materials indicate that school marching bands in [redacted] are sometimes called known "*bandas de guerra*" or "war bands" owing to their association with the military. A news article from 2011 identified the Petitioner as one of several participants in a project to rebrand some marching bands as [redacted] The article does not mention rhythmic therapy or indicate that any

methodology developed by the Petitioner has been implemented nationally. Rather, the article describes a local festival appearance by the "[redacted]"

One former participant in the [redacted] project stated in a letter that he "received direct instruction from [the Petitioner], who used body percussion, rhythm, and movement as structured tools for personal and collective development." The former student stated that, as a result of this training, he "began to experience a sense of order, belonging, and positive motivation." This student later "attend[ed] individual sessions at [the Petitioner's] Academy," which "had a real, sustained, and transformative impact on [his] personal development."

The Petitioner asserted that his academy has used his "proprietary rhythm- and movement-based training methodology . . . integrating body percussion, rhythmic coordination, structured movement patterns, timing exercise, posture training, and structured group interaction activities." The acting rector of [redacted] where the Petitioner taught in the past, stated that the institution has "adopted and implemented" the Petitioner's "rhythmic methodology," producing "positive and consistent effects" both in students' musical abilities and overall discipline and engagement. The use of such methods at music schools appears to be at best indirectly applicable to the proposed endeavor which, as the Petitioner emphasized, "is not a music education program, nor does it aim to teach musical performance." The use of the Petitioner's methods at educational institutions where he has taught does not show wider implementation, nor does it show the national importance of applying similar methods in a therapeutic setting.

The Petitioner stated that expressions of interest from the [redacted] show opportunities for expansion of his project. Email messages from officials of these organizations, discussed further below in greater detail, reflect general, tentative interest in working with the Petitioner in the future. The email messages do not contain any details to indicate national-level implementation of the Petitioner's proposed endeavor or show how such implementation would occur.

USCIS concluded that the Petitioner had not established the potential impact, economic or otherwise, of the proposed endeavor, and had not shown that endeavor "offers original innovations that contribute to advancements in his industry or otherwise has broader implications for the entrepreneurship in his field."

On appeal, the Petitioner contends that that USCIS's description "incorrectly narrows the scope of the endeavor." The Petitioner asserts that his "model is not limited to the direct provision of services, but rather introduces a transferable" (sic) – the passage ends abruptly mid-sentence, followed by nearly half a page of blank space. The Petitioner has not provided sufficient details to show how he planned to transfer his model to other practitioners.

The Petitioner asserts that USCIS mischaracterized record materials such as expert opinion letters and his business plan. These materials offer specifics in some respects, but when it comes to national implementation, there is little detail beyond the assertion that the Petitioner's model is designed to be scalable and that, by opening an unspecified number of additional centers, the Petitioner's proposed endeavor will ultimately have significant impact at a national level.

The Petitioner asserts that his endeavor "[h]as been implemented in multi-regional contexts" and "[p]roduces measurable results in real populations." Discussion of past implementation of the Petitioner's work has been in the context of music education, rather than the therapeutic setting that is central to the proposed endeavor. Statistics regarding "measurable results" appear to derive from earlier studies of underlying principles rather than from any systematic trails of the Petitioner's own methods which, he asserts, are novel and distinct.

The Petitioner has submitted some evidence to show that individual students have benefited from his prior work as a music teacher, and that some of his teaching methods may translate into a therapeutic setting. But the Petitioner has not presented a coherent, consistent picture of how the benefit from his proposed endeavor will extend beyond individual clients to reach national importance.

The Petitioner has not met his burden of proof to fully satisfy the first *Dhanasar* prong.

B. Well Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong shifts the focus from the proposed endeavor to the alien. To determine whether an alien is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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.

In the denial notice, USCIS acknowledged the Petitioner's submission of letters and evidence relating to his experience, but concluded that the Petitioner had not shown "a record of success or otherwise demonstrate[d] he is well-positioned to advance his proposed endeavor." USCIS also determined that the record lacked sufficient evidence of interest in the proposed endeavor, and that the Petitioner had largely relied on "[b]road assertions."

On appeal, the Petitioner contends that the denial decision "reflect[s] a material omission of critical evidence contained in the record" and "speculative interpretation" of that evidence. The Petitioner then discusses several record exhibits in some detail. We will discuss some of the evidence below.

A number of the Petitioner's arguments on appeal take issue with specific wording, such as the use of such terms as "peers" and "employers." These objections do not address the underlying basis for the denial. Ultimately, we agree with the core determination that the Petitioner has not met his burden of proof to show that he is well positioned to advance his proposed endeavor.

Initially, the Petitioner cited background information about rhythmic therapy and related practices, but with respect to his specific proposed endeavor, he stated: "Although this methodology has not yet been systematically implemented, it is structured for immediate deployment." In later submissions, however, the Petitioner claims that his methods have been implemented for over a decade. As discussed above, the Petitioner relies on his prior experience as an educator to show that he can use similar methods in a therapeutic setting.

The business plan for the proposed endeavor indicates that the first phase, "Initial Preparation and Planning," would include "[r]ecruitment of staff [and] identification of the ideal location for the center," indicating that he had not yet taken these initial steps. On Form I-140, asked to specify "the address where the person will work," the Petitioner specified a residential address in [redacted], Florida.[2] The petition includes Form ETA-9089, Application for Permanent Employment Certification, on which the Petitioner specified that same [redacted] address as the "Worksite Address" "where work will be performed"; indicated that the business had five "current employees on payroll"; and attested that the Petitioner did not hold an ownership interest in the company. The record includes no documentary evidence showing that the company is in operation, or even that the Petitioner has registered the business.

These assertions about the worksite location and number of current employees are material to the issue of the Petitioner's progress toward achieving the proposed endeavor. If the company does not yet exist, does not yet have a staff on payroll, and has not yet located an actual work site, then the above assertions provide an inaccurate picture of the Petitioner's progress.

In addition to his teaching career, the Petitioner has also worked as a musician. He stated:

> In 2017, I was granted an O-1 visa for extraordinary ability, a classification reserved for individuals who have achieved distinction in their field. My work has received both national and international recognition. These qualifications demonstrate my professional merit and sustained impact in my specialty, as well as my capacity to contribute meaningfully to U.S. priorities.

(Evidentiary citations omitted.) The documentation from the Petitioner's approved 2017 nonimmigrant petition is not part of the record of proceeding before us. Therefore, the record does not show that the petitioning employer for that petition sought the Petitioner's services as a rhythmic therapist rather than in some other capacity, for example as a musician or music teacher.

More broadly, the Petitioner's proposed endeavor is not simply to continue his career as a drummer. His past career as a musician, however successful, does not directly demonstrate that he is well positioned to establish rhythmic therapy centers across the country.

Music therapist [redacted] provided a letter stating that the Petitioner's "unique expertise" includes not only "mastery of Afro-Latin percussion," but also "neurorehabilitation, and AI-driven therapeutic design." [redacted] did not elaborate on the latter claims, and the Petitioner's own résumé offers no information in this regard.

The Petitioner's experience as a performer and educator are not in question here, but his proposed endeavor is not to be a performer or educator. The Petitioner claims no credentials as a therapist; maintains that the term "therapy" in this case is separate from formal definitions of that term; and appears to presume that methods that have served him well as a teacher could also be applied in a therapeutic setting. These circumstances do not suffice to show that he is well positioned to advance the proposed endeavor. The Petitioner's work as a teacher and as a drummer establishes a skill set

[2] Other documents in the record show the same [redacted] address for [redacted], an entity that assisted with the preparation of petition and appeal materials, including translations of Spanish-language documents.

that overlaps with the proposed endeavor, but does not amount to a record of success in efforts that are sufficiently related or similar to the proposed endeavor.

As evidence of the interest of potential customers, users, investors, or other relevant entities or individuals, the Petitioner cited the email messages from [redacted], briefly discussed above. The Petitioner had reached out to both organizations with identical messages, stating that he was "currently developing a community-based initiative" to help certain at-risk populations "through structured methodologies of rhythm, movement, and body percussion." The Petitioner added: "I am reaching out to briefly share this initiative and to ask, at a general level, whether this type of community-based approach is something you consider relevant or of interest," and he asked for "any brief thoughts on the potential value, relevance, or applicability of this type of initiative."

The [redacted] official responded: "Your proposed community initiative aligns well with our work, and I'd be happy to meet and have a discussion about how we may support one another." There is no evidence of any subsequent contact, and the vague, tentative willingness to discuss the matter further is not an indication of interest sufficient to satisfy the second *Dhanasar* prong.

The clinical psychologist with [redacted] stated: "I think there could be benefits to this initiative. In the neurology department at the main hospital campus, we have a music therapist for older adults in dementia, and there are lots of people in this area who fit into the diagnostic categories" that the Petitioner described in his prior message. The psychologist did not express interest in working with the Petitioner or adopting his methods.

While the Petitioner has long experience in the musical field of percussion and has been a teacher and entrepreneur for much of that time, his proposed endeavor is not simply an extension of this work. The Petitioner has not established that his "proprietary . . . methodology" has been used in a therapeutic setting, or that he has any prior experience establishing and operating a therapeutic establishment or expanding such an enterprise to a national scale. The center he intends to establish does not appear to exist yet and the Petitioner has not shown that he has taken concrete steps in that direction.

A petitioner should submit evidence to document the alien's past achievements, explain how those achievements relate to the proposed endeavor or provide evidence of progress towards achieving the endeavor, and corroborate projections related to the proposed endeavor. *See, generally*, 6 *USCIS Policy Manual* F.5(D)(3), https://www.uscis.gov/policy-manual. In this case, the Petitioner's past achievements relate only indirectly to the proposed endeavor, and do not show that he has made significant progress toward his proposed endeavor of establishing a national network of rhythmic therapy centers.

The Petitioner has not met his burden of proof to show that he is well positioned to advance the proposed endeavor.

In light of the above conclusions, detailed discussion of the third *Dhanasar* prong cannot change the outcome of this appeal. Because the Petitioner has not otherwise established eligibility for the classification sought, we need not reach, and therefore reserve, the third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor, and has not shown that he is well positioned to advance that endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.