U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43197051

Date: JUNE 4, 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 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

USCIS denied the petition, concluding the record did not establish 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 pursuant to 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.

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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 U.S. Citizenship and Immigration Services (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 individual is well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer requirement would benefit the United States. *Id.*

The Petitioner states he has 15 years of experience as a high school math teacher and proposes to "enhance[e] hybrid and distance learning approaches for K-12 education." He plans to create a "scalable instructional improvement framework" consisting of: foundations of hybrid and distance

[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).

learning; flexible, inclusive instructional design strategies; technology integration using widely available, high-impact tools; lesson study-based professional development informed by the Petitioner's publications; and monitoring, evaluation, and iterative instructional refinement.

USCIS determined that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional but that he did not establish his eligibility under the *Dhanasar* analytical framework. Specifically, USCIS concluded that while the Petitioner had established the substantial merit of his proposed endeavor and that he is well positioned to advance it, he had not demonstrated his proposed endeavor's national importance or that, on balance, it would be beneficial to the United States to waive the job offer requirements.

On appeal, the Petitioner provides substantive arguments as to *Dhanasar's* first prong. However, he does not address or contest USCIS' specific conclusion and related findings that the evidence of record did not establish that on balance, waiving the job offer requirement would benefit the United States under the third prong.

In its denial, USCIS specifically noted that it considered factors relevant to the third prong including the impracticality of obtaining a labor certification; the benefit to the United States from the beneficiary's prospective contributions, even if other U.S. workers are also available; and whether the national interest in the individual's contributions is sufficiently urgent. USCIS outlined the many factors considered, but the Petitioner does not directly address any of these points on appeal.

As noted above, in determining whether the Petitioner warrants a discretionary national interest waiver, we apply the *Dhanasar* framework and its requisite three prongs, any one of which is dispositive.[2] Because the Petitioner has not addressed with specificity USCIS' determination that he does not qualify for a national interest waiver under the third prong, and in particular the impracticality of the labor certification process, we deem the issue to be waived. *See Matter of Garcia*, 28 I&N Dec. 693 n.1 (BIA 2023) (providing that arguments that do not meaningfully challenge the decision are waived); *Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (providing that arguments not developed on appeal are deemed waived).

As the Petitioner has not shown that he satisfies the third prong, he cannot establish eligibility for a national interest waiver. Since this issue is dispositive of the appeal, we decline to reach and hereby reserve remaining issues and arguments concerning SCOPS' determinations as to the first and second *Dhanasar* prongs.[3] *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).

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

[2] In his appellate brief, the Petitioner acknowledges the three-pronged analytical framework outlined in *Matter of Dhanasar* and that USCIS may grant a national interest waiver where all three prongs have been met.

[3] The Petitioner submitted additional evidence with his appeal. However, they relate to his first prong arguments, which we reserve and do not reach in this decision.

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.