



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

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

In Re: 27525640

Date: AUG. 2, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a mining technician, 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).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that the Director did not objectively evaluate all evidence under the preponderance of evidence standard, instead imposing a stricter standard, and erroneously applied the law to his detriment.

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)(A) of the Act.

“Advanced degree” means any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. *Id.*

“Profession” means one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32),¹ as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

“Exceptional ability” in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).² Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. We will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.³

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 discretion⁴, grant a national interest waiver if the petitioner demonstrates that:

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

A. EB-2 Visa Classification

As indicated above, the 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)(A) of the Act. The Director determined that the Petitioner has established that he is a member of the professions holding an advanced degree. However, upon de novo review, we conclude that the Petitioner has not demonstrated eligibility for EB-2 visa classification either as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business.

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

² If these types of evidence do not readily apply to the individual’s occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

³ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

⁴ *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 Petitioner proposed to work in the United States as a mining technician and provide mining engineering and project management services to mining companies. The Petitioner holds a mining technician certificate from Education Center [redacted] a technical school. The Petitioner also holds a bachelor's degree in production engineering from the [redacted] in [redacted]. The Petitioner also holds a course certificate for an MBA program in project management from [redacted] Foundation.

Although the regulations do not require a credentials evaluation to establish that a foreign degree is equivalent to a U.S. degree, generally, an individual's own assertions regarding equivalency bears minimal probative value. In addition, evidence of the individual's education must include copies of official degrees, transcripts, and any required translations. A foreign degree or claimed degree equivalency based on a combination of education and experience must be accompanied by a reliable, independent credentials evaluation.

Here, the Petitioner submitted a bachelor's degree in production engineering from the [redacted] in [redacted] but did not submit a transcript or an evaluation of academic records to establish that his bachelor's degree from the [redacted] in [redacted] was the equivalent of a baccalaureate degree from an accredited college or university in the United States. A bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm'r 1977). In that case, the Regional Commissioner declined to consider a three-year bachelor of science degree from India as the equivalent of a U.S. baccalaureate degree because the degree did not require four years of study. *Id.* at 245. The Petitioner also submitted a course certificate for an MBA program in project management from [redacted] Foundation but did not submit a transcript or an evaluation of academic records to establish that his completion of an MBA program in project management in [redacted] Foundation was the equivalent of an academic or professional degree above that of baccalaureate from an accredited college or university in the United States.

If the Petitioner claimed that he is a member of the professions holding an advanced degree based on his combined education and work experience, the Petitioner must show that he has at least five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2). This evidence must be in the form of letter(s) from current or former employer(s) and must include the name, address, and title of the writer, and a specific description of the duties performed by the individual. *See* 8 C.F.R. § 204.5(g). If such evidence is unavailable, other documentation relating to their experience will be considered. *See id.*

While the Petitioner claims that he has over 15 years of work experience in the mining engineering industry in the United States,⁵ the record lacks letters from his current or former employer(s) or other sufficient evidence. The Petitioner submitted his resume, which indicates that he worked for [redacted] a mining company in Brazil, as a laboratorist from 2006 to 2012, as a control and process technician from 2012 to 2014, and as a specialized technician in production from 2014 to 2017. The Petitioner also submitted his statement describing his job responsibilities with his former employer. However, he did not submit a letter from [redacted] or other sufficient evidence.

⁵ *See* the Petitioner's appeals brief, dated April 3, 2023.

For the reasons we have discussed above, the Petitioner has not established by a preponderance of the evidence that he is a member of the professions holding an advanced degree. In addition, the Petitioner did not claim eligibility for EB-2 visa classification as an individual of exceptional ability in the sciences, arts, or business and did not submit evidence to establish that he is an individual of exceptional ability in the sciences, arts, or business.

B. National Interest Waiver

The Director determined that the Petitioner's proposed endeavor to work in the United States as a mining technician has substantial merit. But the Director determined that the Petitioner has not established that his proposed endeavor is of national importance, that he is well positioned to advance the proposed endeavor, and 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.

On appeal, the Petitioner contends that the Director did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law to his detriment. The Petitioner further contends that he submitted evidence demonstrating under the preponderance of the evidence standard that the proposed endeavor is nationally important and has substantial merit, that he is well positioned to advance his proposed endeavor, and that, on balance, it would be beneficial to the United States to waive the requirements of a labor certification.

Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that the petitioner's claim is "probably true." *Id.* at 376. We will examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. In this case, we have reviewed each piece of evidence, both individually and within the context of the totality of the evidence, and conclude that the Petitioner has not established by a preponderance of the evidence the national importance of his proposed endeavor for the reasons we will discuss below.

At the time of filing his petition, the Petitioner submitted his statement; resume; diplomas; a publication from [redacted] iron project, an expansion in iron ore mining and processing at the [redacted] mining complex in Brazil; an industry report about mining and geological engineers; and letters of support from his former teacher, classmate, and colleagues. In response to a request for evidence, the Petitioner submitted an impact analysis of his proposed endeavor as a mining technician. On appeal, the Petitioner does not submit new evidence to overcome the deficiencies noted in the Director's decision. While we may not address each piece of evidence individually, we have reviewed and considered each one.

The Petitioner proposed to work in the United States as a mining technician and provide mining engineering and project management services to mining companies. The Petitioner stated that he will apply his extensive knowledge of operational and administrative procedures in the mining sector to improve his future employers' processes and outcomes, evaluate the employers' processes, identify weakness in their operations, and improve their operations to ensure maximum efficiency,

accountability, and profitability.⁶ The Petitioner asserted that his expertise in the mining process will enable him to improve the cost-effectiveness of his future employers' operations, limit associated environmental damages, boost the U.S. mining industry, and benefit national security and clean energy economy.⁷

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *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.* For example, endeavors related to research, pure science, and the furtherance of human knowledge may qualify. *Id.*

Here, we agree with the Director regarding substantial merit of the Petitioner's proposed endeavor. We determine that the Petitioner's proposed endeavor to work as a mining technician in the United States and provide mining engineering and project management services to mining companies in order to improve his employers' operations to ensure efficiency, accountability, and profitability, limit associated environmental damages, boost the mining industry, and benefit national security and clean energy economy has substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. *Id.* We look for broader implications. *Id.* An 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 contends that his proposed endeavor has national importance because mining engineering is a crucial industry in the United States due to its contributions to job creation, economic growth, national security, and technological advance. The Petitioner further asserts that the national initiatives that connect to mining engineering aim to support its sustainable and responsible practices, increase the production of critical minerals, ensure energy security, and improve infrastructure development, and ensure that the mining industry continue to support the U.S. economic and national security interests.

While we acknowledge national importance of mining engineering, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the specific endeavor that the foreign national proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate by a preponderance of the evidence that the specific endeavor that he proposed to undertake – providing mining engineering and project management services to mining companies as a mining technician - is of national importance.

While we acknowledge the Petitioner's claims, he has not provided sufficient evidence to substantiate them. For example, he has not provided sufficient documentary evidence that his proposed endeavor

⁶ See an impact analysis of the Petitioner's proposed endeavor, at 3, dated November 2, 2022.

⁷ See *id.*

as a mining technician for mining companies would impact the mining industry more broadly rather than benefiting his employers and their clients. The record does not contain sufficient information and evidence to explain how his proposed activities to provide mining engineering and project management services to mining companies will have broader implications within the mining industry. For instance, he has not shown that his undertaking will significantly improve exploration efficiency, ease mining challenges, reduce environmental impacts of mining activities, ensure energy security, or enhance critical minerals production volume in our country. Without sufficient documentary evidence of their broader impact, the Petitioner's proposed employment does not meet the national importance element of the first prong of the *Dhanasar* framework.

The record includes letters of support from the Petitioner's former teacher, classmate, and colleagues describing the Petitioner's academic and professional activities and accomplishments in the field. For example, [REDACTED] a teacher and a course coordinator at a learning institute, states that the Petitioner completed studies in cost control and mining and recommends him as an exemplary student who was very engaging in class, had great study ethics, and was organized and disciplined to achieve his goals. For another example, [REDACTED] a mining engineer, states that he worked with the Petitioner on various mining projects and praises the Petitioner as an ethical and respected professional with extensive experience and knowledge in the mining industry. [REDACTED] further states that the Petitioner has unique experience in sieving, crushing, and ore handling and knowledge in characterizing minerals. For another example, [REDACTED] an engineer and the chief executive officer of a consultancy company, states that the Petitioner's work for cost control in a mineral analysis laboratory of [REDACTED] improved the control and management of costs for mineral analysis at the company and that the Petitioner's participation in [REDACTED] project created jobs for thousands of people and contributed to the communities in which the projects were carried out. While these letters provide positive reference to the Petitioner's skills, experience, and work ethics, they do not provide examples of how his work has influenced the mining industry or the communities in which the projects were carried out or how his work would advance the interests of the mining industry in the United States beyond the mining companies he would serve.

As for the economic value that the Petitioner asserts his proposed endeavor will offer, the record lacks sufficient evidence demonstrating that the Petitioner's proposed endeavor will have an impact on the mining industry or the U.S. economy at a level commensurate with national importance. He has not offered sufficient evidence that his employers will employ a significant population of workers in an economically depressed area or that his endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner demonstrated that any increase in his employers' revenue as a result of his provision of mining engineering and project management services stands to substantially affect economic activity regionally or nationally. The Petitioner has not otherwise provided sufficient information and evidence to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance. Accordingly, the record does not sufficiently demonstrate the Petitioner's proposed endeavor is of national importance.

Because the documentation in the record does not establish by a preponderance of the evidence the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Therefore, further

analysis of his eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose. We will reserve these issues for future consideration should the need arise.⁸

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence his eligibility for EB-2 visa classification either as a member of the professions holding an advanced degree or an individual of exceptional ability. In addition, the Petitioner has not established by a preponderance of the evidence that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

The appeal will be dismissed for the reasons stated above, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁸ 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 alternate issues on appeal where an applicant is otherwise ineligible).