



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

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

In Re: 29044820

Date: DEC. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner is a business development manager who 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 Texas Service Center 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. 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 individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Once a petitioner demonstrates EB-2 eligibility, 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 USCIS may, as matter of discretion,¹ 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.

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).

II. ANALYSIS

Although the Director did not discuss the Petitioner's qualification for the EB-2 classification, the record contains the Petitioner's degree certificates along with corresponding transcripts showing that the Petitioner was awarded a bachelor's degree in economics in 2014 and a master's degree in management in 2017 by the [REDACTED]. The record therefore establishes that the Petitioner qualifies for the EB-2 classification as an advanced degree professional.

The issue on appeal 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor the individual 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 national importance, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec at 889. The endeavor in this case is to own and operate a long-distance freight trucking company that will transport cargo in the construction, manufacturing, wholesale, and retail trade industries.

On appeal, the Petitioner states that a favorable determination had been previously made regarding the substantial merit and national importance components of the first prong. We disagree with the Petitioner's interpretation of the Director's decision, which contains neither a discussion nor a final determination concerning the first prong components. Despite the lack of a first prong discussion, the record appears to support a favorable determination on the substantial merit element but does not appear to support a similar finding on the national importance element of the first prong. The broader importance of addressing the need for long-distance freight trucking and its impact on the U.S. economy does not necessarily impart national importance to the Petitioner's specific endeavor as a business owner and entrepreneur in the trucking industry. That said, however, we need not explore this issue further given that the stated grounds for denial support dismissal of the appeal without having to address national importance.

Accordingly, we turn to the second *Dhanasar* prong, which shifts the focus from the proposed endeavor to the individual. To determine whether an individual is well-positioned to advance the specific proposed endeavor, we consider factors including, but not limited to the following: 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. *Id.* at 890.

Although the record shows that the Petitioner has sufficient education, skills, and knowledge of the canned food company he partly owned in Russia, it does not show that he has a record of success in the U.S. freight trucking industry, which is a critical element of the Petitioner's proposed endeavor. Nor does the record contain sufficient evidence demonstrating that the Petitioner made progress in advancing his endeavor or that he had potential customers or business partners who were interested in his endeavor when this petition was filed.

At the time of filing the Petitioner provided a personal statement focusing on his education and employment experience, which he claims resulted in his “exceptional ability as a [b]usiness [d]evelopment [m]anager.” The Petitioner highlighted his leadership role in a company that supplied canned peas and corn and which he founded and co-owned in Russia; the Petitioner discussed decisions he made regarding the company’s finances and operations, asserting that his contributions led to the company’s growth and development. To that end, the Petitioner provided letters of recommendation from prior business associates who manufactured canned goods and containers and with whom the Petitioner engaged in contract negotiations. The former business associates broadly referenced the Petitioner’s strong work ethic and ability to forge business relationships with clients and business partners. However, the Petitioner does not explain how his relationships with various parties in the canned food industry in Russia will assist him in his endeavor to provide transportation services to businesses in the United States. We note that the letters made no mention of the Petitioner’s knowledge of or experience in the trucking industry in the United States, where the Petitioner plans to pursue his business endeavor.

The record also contains a business plan, which includes financial and personnel forecasts for the Petitioner’s company, [REDACTED]. However, the record shows that the company was formed in [REDACTED] 2023, approximately eight months after this petition was filed in June 2022. And although the Petitioner provided a bank account summary showing that he opened a company bank account into which he deposited \$325,000, the document shows that the account was opened on [REDACTED] 2023; as such, there is no evidence that funds were available at the time of filing. Further, the plan projects that the company’s first-year start-up and operating expenses will total \$422,053 and will be offset with an estimated revenue of \$504,000. The Petitioner did not, however, adequately explain how these projections were calculated.

In denying the petition, the Director acknowledged the relevance of educational credentials in establishing eligibility for the EB-2 classification but noted that academic accomplishments are not sufficient to establish that the Petitioner is well-positioned to advance his endeavor. The Director further noted that the recommendation letters the Petitioner submitted from business associates and past clients did not demonstrate a record of success as a development manager in transportation. The Director also pointed to the lack of evidence showing: that the Petitioner was recognized for accomplishments or contributions in his field, that the proposed endeavor has generated interest among relevant parties in the field, or that forward progress has been made with respect to the proposed endeavor. In light of these findings, the Director concluded that the Petitioner did not submit sufficient evidence demonstrating that he is well-positioned to advance his endeavor.

On appeal, the Petitioner argues that previously submitted documents that pertain to [REDACTED] [REDACTED], his company in Russia, were overlooked; he argues that [REDACTED] success along with the previously mentioned letters of recommendation demonstrate the Petitioner’s record of success. However, as previously noted, the referenced letters focused entirely on the Petitioner’s prior work in Russia and did not indicate that the Petitioner had any knowledge of the transportation business in the United States, where he seeks to pursue his proposed endeavor. Likewise, while we acknowledge the Petitioner’s prior submission of two thesis papers analyzing public-private partnership projects and expounding on management of working capital, respectively, neither indicates that the Petitioner’s prior work experience involved operating a business that generated revenue by providing transportation services.

Although the Petitioner asserts that his business in Russia “is essentially a transportation business,” this assertion is inconsistent with the Petitioner’s own categorization of the foreign company – the [redacted] – as a business that is engaged “in the production of canned products.” While the [redacted] likely uses transportation to move and receive products, there is no evidence that generates revenue by offering transportation services to clients. Rather, its primary objective is to sell and distribute the canned goods that it produces, an endeavor that is markedly distinct from the one the Petitioner seeks to pursue in the United States.

In sum, the evidence does not show that the Petitioner’s track record of running a canned goods business in Russia, his plan for future activities in the United States, or his progress in establishing a company render him well-positioned to advance the proposed endeavor. Nor does the record reflect sufficient interest from potential customers, users, investors, or other relevant entities or individuals to demonstrate that the Petitioner is well-positioned to advance his proposed freight trucking business. For these reasons, the Petitioner has not established that he satisfies the second prong of the *Dhanasar* framework.

As explained above, 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. Here, however, the Petitioner has not established that he is well-positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework. As such, the Petitioner is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

ORDER: The appeal is dismissed.