



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

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

In Re: 28980890

Date: DEC. 27, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in transportation, 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 although the Petitioner qualifies for classification as a member of the professions holding an advanced degree, he 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. 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 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)(B)(i) of the Act.

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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

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).

- 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

The issue to be addressed 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 Director denied the petition, concluding that the Petitioner did not establish that: (1) his proposed endeavor met the standard for national importance,² (2) that he is well position to advance his endeavor, or (3) that on balance, waiving the job offer requirement would benefit the United States.

For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

As previously stated, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. Here, the petition lists “entrepreneur” as the Petitioner’s job title and occupation. However, the initial supporting evidence did not include further discussion or description of the proposed endeavor. The Director therefore issued a request for evidence instructing the Petitioner to provide a more detailed description of the proposed endeavor, explain why it has substantial merit, and submit documentary evidence showing that the endeavor has national importance.

In response, the Petitioner stated that his endeavor is to be a business owner in the trucking industry. He pointed out that the trucking industry is important to the U.S. economy and stressed the industry’s impact on manufacturing and retail. Further, he stated that his endeavor has national importance “because it will aid in the growth of other businesses” and help create U.S. jobs, enhance societal welfare, and is “directly related to a number of government initiatives, programs, and departments.”

The Petitioner also provided a share transfer agreement and share certificate showing his ownership interest in [redacted] as of February 15, 2022. We note that the affected party has the burden of proof to establish eligibility for the requested benefit *at the time of filing* the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971) (providing that “Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.”). Given that the documents establishing the Petitioner’s ownership in [redacted] are dated February 15, 2022, it appears that he did not own the company as of November 2021, when this petition was filed.³ As such, it is unclear whether the Petitioner’s job title of “entrepreneur,” as listed at the time of filing,

² The Director determined that the Petitioner’s proposed endeavor has substantial merit.

³ The Petitioner did not provide the company’s formation documents and thus it is unclear when the company was established.

included owning and operating his own business, which he did not list as part of his employment history.⁴

Regardless, the Petitioner provided [redacted] business plan, which states that the company will provide “high-level truck transportation services to clients across the nation” and improve the quality of U.S. trucking services, thereby benefiting the entire trucking industry. Although the business plan states that the company will address the truck driver shortage by “integrat[ing] the widely ignored Uzbek truck driver employee market into the U.S. transportation network,” it does not elaborate on how such integration will take place.

Further, the Petitioner focuses heavily on the freight trucking industry’s impact on the manufacturing and retail industries. However, in determining national importance, 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. More specifically, “we look for broader implications” of the proposed endeavor, keeping in mind that an endeavor may have national importance “because it has national or even global implications within a particular field.” *Id.* Here, the Petitioner does not adequately explain how his proposed endeavor of owning and operating a freight trucking business has national importance.

An endeavor can also be deemed as having national importance if it “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. To this end, the Petitioner’s business plan states that his company will generate tax revenue, projecting that revenue will steadily increase from \$509,280 in the first year of operation to nearly \$3 million by the fifth year. However, the plan did not elaborate on those revenue projections or adequately explain how they were calculated. And although the business plan projects that the company will employ 14 people, including the Petitioner, by its fifth year of operation, the Petitioner did not, for example, show that such employment figures would utilize a significant population of workers in the area or that they would substantially impact job creation and economic growth, either regionally or nationally.

The Petitioner also refers to his educational credentials and “professional experience” as a truck driver and “manager assistant” in a factor. However, the Petitioner’s skills, expertise, abilities, and prior accomplishments relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor he proposes to undertake has national importance under *Dhanasar*’s first prong.

Moreover, to evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of his work. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how his proposed endeavor of owning and operating a freight trucking company stands to largely influence the field and rise to the level of national importance. In *Dhanasar*, we determined the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more

⁴ The Petitioner completed a Form ETA 750 Part B, Application for Alien Employment Certification, where he listed “transportational [sic] professional” and personal shopper as the two positions he previously held.

broadly. *Id.* at 893. Likewise, the record here does not show through supporting documentation how the Petitioner’s business stands to sufficiently extend beyond its prospective clients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

On appeal, the Petitioner points out that “[f]irst and foremost, the [t]rucking [i]ndustry plays a crucial role in the U.S. economy.” As previously stated, however, in determining whether an endeavor has national importance, our focus is not on the industry of the endeavor, but rather on the endeavor itself. *See id.* at 889. And although the Petitioner argues that his trucking company will result in job creation, as noted earlier, the record lacks sufficient evidence to establish that the endeavor would utilize a significant population of workers in the area or that the job creation would be substantial, resulting in economic growth, either regionally or nationally.

Furthermore, the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his employees and clientele to impact the freight trucking industry at a level that is commensurate with national importance.

In sum, the documentation in the record does not establish the national importance of the Petitioner’s proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. As such, the Petitioner has not demonstrated eligibility for a national interest waiver and further analysis of his eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose.⁵

ORDER: The appeal is dismissed.

⁵ *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *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 applicants do not otherwise meet their burden of proof).