



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

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

In Re: 27032698

Date: JULY 7, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the field of trucking transportation business, 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.

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.

“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).

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.

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 discretion², 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

The Petitioner proposed to work in the United States as an entrepreneur in the field of trucking transportation business. He holds a master’s degree in business administration from [REDACTED] University [REDACTED]. The Director determined that he is eligible for the EB-2 classification as a member of the professions holding an advanced degree, and we agree. The remaining issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of that classification’s job offer requirement. We conclude that he is not.

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that 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 whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner has not submitted a detailed description of the proposed endeavor or documentary evidence demonstrating that the proposed endeavor will have potential prospective impact. The Petitioner states that his proposed endeavor is to seek employment as an independent business owner specializing in trucking transportation business through his trucking company, [REDACTED] Illinois. The Petitioner further states that [REDACTED] will provide logistics services that involves the pickup of dry-van and reefer loads, package them in their truck, and transport the goods from a place of origin to a point of delivery around the United States. We find that the Petitioner has provided a detailed description of his proposed endeavor.

On appeal, the Petitioner contends that his proposed endeavor has both substantial merit and national importance because he seeks employment in the trucking industry, owning and operating his own trucking company, which will be engaging in interstate transportation and will benefit interstate commerce. The Petitioner claims that given the current shift to online orders and the growing need for delivery services, the need for services offered by him is in the national interest and of substantial merit. The Petitioner asserts that all over the world, there is an ever-increasing need to move items

² 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).

from one place to another and that transporting goods by truck is the most widely used mode of transport in Canada and North America because it is safe, reliable, and cost-effective.

We determine that the Petitioner's proposed endeavor has substantial merit based on his claims that his trucking company will be engaging in interstate transportation and will benefit interstate commerce, will address the growing need for delivery services, and will transport goods by truck as a safe, reliable, and cost-effective mode of transportation for businesses and their consumers.

The Petitioner contends that [REDACTED] will contribute to the overall U.S. economy by providing expert services, generating taxes, and creating new job opportunities. The Petitioner also contends that his proposed endeavor will contribute to America's prosperity and opportunity by providing high-quality trucking services, which will advance the trucking industry.

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 "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In addition, we indicated 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.

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. The Petitioner incorporated his trucking company, [REDACTED], in July 2022 and claims that his company will provide logistics services. The Petitioner further claims that his trucking company will contribute to the overall U.S. economy by providing expert services, generating taxes, and creating new job opportunities and will contribute to the U.S. prosperity by providing high-quality trucking services, which will advance the trucking industry. While we acknowledge the Petitioner's claims, he has not provided sufficient evidence to substantiate them. He has not provided sufficient documentary evidence that his proposed endeavor to be the owner of his trucking company would impact the trucking industry more broadly rather than benefiting his own company and its clients. 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 Petitioner claims that [REDACTED] will generate tremendous income by putting only dry van trucks and refrigerator trucks that are in top shape on the road and ensuring that all their drivers and material handlers are trained to be careful, courteous, friendly, and abide by the industry's rules and regulations. In response to a request for evidence (RFE), the Petitioner submitted a business plan and the articles of incorporation of [REDACTED]. As for the economic value that the Petitioner asserts his company will offer, the business plan includes projections of \$500,000 in total revenue in the first year of operation, \$1,060,000 in total revenue in the third year of operation, and \$1,950,000 in the fifth of operation.

However, the business plan does not provide sufficient details of the basis for these projections or adequately explain how this revenue will be realized. Moreover, even if all the projections in the

business plan were realized, the record lacks sufficient evidence demonstrating that the Petitioner's business will have an impact on the trucking industry or the U.S. economy at a level commensurate with national importance. In addition, the business plan indicates that the company is located in [REDACTED] Illinois, but the record does not sufficiently demonstrate that the company will be operating its business in the underserved business zones, in a rural area, in a high unemployment area, or in an economically depressed area or that the endeavor would otherwise have substantial positive economic effects.

In response to the RFE, the Petitioner also submitted an advisory opinion letter from [REDACTED] [REDACTED] an associate professor of quantitative management in the college of business at [REDACTED] University, in support of his application for permanent residence in the United States and request for a national interest waiver. [REDACTED] asserts that the Petitioner's proposed endeavor has significant national importance and is a matter of national concern, is aimed at furthering the goals of the transportation and logistics industry that has considerable potential to employ U.S. workers, and presents a solution for environmental and occupational hazards related to the transportation and logistics industry.

However, the Petitioner has not offered sufficient evidence that his trucking company 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. The business plan does not explain the company's staffing requirements and does not indicate how many jobs will be created by the Petitioner's trucking company. Nor has the Petitioner demonstrated that any increase in his company's revenue stands to substantially affect economic activity regionally or nationally. Additionally, while [REDACTED] claims that the Petitioner's proposed endeavor will provide a solution for environmental and occupational hazards related to the transportation and logistics industry, the business plan or the record does not speak to how the Petitioner or his trucking company will address those issues.

Moreover, the letter from [REDACTED] conflicts with other information in the record. For example, [REDACTED] states on page 4 of her letter that at the time of the letter in August 2022, the Petitioner had over six years of experience in the logistics field. However, the Petitioner's resume, employment history provided in his Form I-485, Application to Register Permanent Residence or Adjust Status, and work experience provided in part B of his ETA 750, Application for Alien Employment Certification, all reflect that the Petitioner has less than two years of experience (a total of 19 months) in his field.³ For another example, [REDACTED] states on page 14 of her letter that the Petitioner worked at [REDACTED] for four years from January 2016 to May 2020. However, in his resume, Form I-485, and ETA750 Part B, the Petitioner indicated that he worked for the same company from May 2016 to December 2016 - for less than one year. For another example, [REDACTED] states on page 15 of her letter that the Petitioner presently employs 80 full-time workers, including one general manager, six dispatchers, and 73 drivers. However, the business plan does not indicate that the Petitioner's trucking company has any employees, and the claimed employment of 80 full-time workers are not support by the evidence in the record.

³ In his Form I-485 and Part B of ETA 750, the Petitioner indicated that he worked as an economist at [REDACTED] [REDACTED] in Uzbekistan from May 2016 to December 2016 (8 months) and that he worked as a logistics officer at [REDACTED] from July 2020 to May 2021 (11 months). In his resume, the Petitioner indicated that he started working at [REDACTED] in May 2020, instead of July 2020.

USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). Nevertheless, since USCIS is responsible for making the final determination regarding a petitioner's eligibility for the benefit sought, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *See id.* In this case, since the expert opinion letter is referencing things not in the record and contains several conflicting statements, we give less weight to that evidence and determine that the record lacks sufficient information and evidence to establish the national importance of the Petitioner's proposed endeavor.

Furthermore, to support claims regarding the national importance of his proposed endeavor, the Petitioner makes a reference to a report of the U.S. Small Business Administration Office of Advocacy, which states that small businesses create two-thirds of net new jobs and drive the U.S. innovation and competitiveness. The Petitioner also makes a reference to a study conducted by the Massachusetts Institute of Technology, which examines the role of immigrants in entrepreneurship and supports that immigrants play an increasingly pivotal role in the U.S. economy. The Petitioner asserts that entrepreneurs improve the lives of individuals, communities, and the overall economy and that they help raise the standard of living for everyone by creating jobs and making products safer, less expensive, and more functional. While the report and study referenced by the Petitioner indicate the importance of small businesses in the U.S. economy and competitiveness and the important role immigrant entrepreneurs play in the U.S. economy, they do not specifically establish that the Petitioner's proposed endeavor will have broader implications in the U.S. economy or national or global implication within the trucking industry. 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. As such, the record does not sufficiently demonstrate the Petitioner's proposed endeavor is of national importance.

Because the documentation in the record does not establish the national importance of his proposed endeavor required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. We will reserve these issues for future consideration should the need arise.⁴

III. CONCLUSION

Although the Petitioner has shown that he is a member of the professions holding an advanced degree and that his proposed endeavor to work in the United States as an entrepreneur in the field of trucking transportation business has substantial merit, he has not shown by a preponderance of the evidence that his proposed endeavor has national importance. Accordingly, 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.

⁴ *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).

ORDER: The appeal is dismissed.