



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

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

In Re: 27611594

Date: JULY 25, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur, seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for EB-2 classification but that the record did not establish that a waiver of the job offer requirement is 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.

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. The Director found that the Petitioner qualifies for EB-2 classification as an advanced degree professional, based upon obtaining the foreign equivalent of a master's degree in finance and credit.¹

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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

¹ The Petitioner submitted evidence that she obtained a "diploma of specialist" in finance and credit from the [redacted] Finance and Banking in [redacted] Russia. However, the Petitioner did not submit a credential evaluation to establish the equivalence of this diploma to a degree in the United States. A petitioner must submit relevant, probative, and credible evidence to satisfy their burden of proof. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

interest waiver petitions. *Dhanasar* states that USCIS may, as a matter of discretion,² 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.

The Petitioner's proposed endeavor is to be an entrepreneur in the trucking and logistics industry. In the initial filing, the Petitioner did not describe the proposed endeavor in detail, stating only that she plans "to work in the field of cargo freight transportation" and that she was "looking for a job as an independent logistics and trucking business owner." In response to the Director's request for evidence (RFE), the Petitioner submitted registration documents for a corporation, [REDACTED], and a business plan stating that this company would be focused on developing a mobile application for use in the trucking and logistics industry.³

The Director found that the Petitioner established the substantial merit of the proposed endeavor but not its national importance. The Director further found that the Petitioner did not establish either the second or third prongs of the *Dhanasar* framework. As to the national importance of the proposed endeavor, the Director specifically concluded that the Petitioner did not provide sufficient documentary evidence to support the claim that the proposed endeavor to create a mobile application would impact the logistics and trucking industry on a national level. The Director also found that the information in the business plan, submitted in response to the RFE, was not sufficient to establish that the proposed endeavor has the significant potential to employ U.S. workers or have other substantial positive economic effects.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Id.* at 890.

On appeal, the Petitioner submits a brief and another copy of the business plan. The appeal brief asserts that the Director's decision was in error and that the Petitioner merits a waiver of the job offer requirement in the national interest. However, the brief does not identify any specific legal or factual errors in the Director's finding that the Petitioner did not establish her proposed endeavor's national importance and does not address or attempt to overcome any of the Director's specific findings as to national importance. We also note that most of the language in the appeal brief appears to be copied from the Petitioner's business plan, providing statistics and information about the logistics and

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).

³ We note that a petitioner must establish eligibility at the time of filing the petition. 8 C.F.R. § 103.2(b)(12). The purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The Petitioner did not describe the initial proposed endeavor as including the development of a mobile application. Nevertheless, we will consider the business plan submitted in response to the RFE, as it does relate to establishing a business in the trucking and logistics industry.

trucking industry and claiming that the Petitioner will develop a mobile application to facilitate cargo handling, rather than providing substantive appellate claims that address the basis for the Director's decision.

Moreover, upon de novo review, we agree with the Director that the record does not establish the national importance of the Petitioner's specific proposed endeavor. The evidence in the record that relates to the proposed endeavor includes the Petitioner's initial statement and the business plan and corporate registration documents submitted in response to the RFE.⁴ As stated above, the Petitioner's initial statement did not describe the proposed endeavor in detail or establish its national importance, stating only that the Petitioner was "looking for a job as an independent logistics and trucking business owner."

The business plan submitted in response to the RFE claims that the Petitioner will develop a mobile application for the logistics and trucking industry that will be an "accurate, informative, and easy-to-use cargo handling application." But the business plan provides very little information as to the specific purpose or functionality of the proposed mobile application. The "Company Overview" section states the office location, website, social media, and mobile application itself are "TBD" [to be determined]. Without further specific evidence about the project, we are unable to evaluate the credibility of the claims in the business plan that the application will "diminish the number of errors often experienced in the sector" and lead to "higher taxable income in the U.S." Similarly, without a specific product already developed, we conclude that the Petitioner has not established that the plan's financial projections, which estimate around \$500,000 in revenue by year five, are credible. Although the business plan claims that the proposed endeavor will have a broad impact on the trucking industry, this claim is not supported by probative and persuasive evidence in the record.

The Petitioner has not established that her proposed endeavor has national importance, as required by the first prong of the *Dhanasar* analytical framework. Because the Petitioner has not met the requisite first *Dhanasar* prong, we conclude that the Petitioner has not established that she is eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. 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 alternative issues on appeal where the applicant is otherwise ineligible).

ORDER: The appeal is dismissed.

⁴ The record also contains evidence of the Petitioner's educational credentials and work experience, evidence of her membership in an organization called the [REDACTED] and evidence of her registration as an "individual entrepreneur" in Russia. These documents do not describe the proposed endeavor nor help establish its potential prospective impact, but instead might be considered under the second prong and whether the Petitioner is well-positioned to advance the endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 889.