



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

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

In Re: 28311150

Date: SEP. 25, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a linguist, seeks classification as a member of the professions holding an advanced degree. *See* 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed

endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As noted above, the Director determined that “the evidence is sufficient to establish that the [P]etitioner is an advanced degree professional.” However, the only education the Director addressed in the decision is a “bachelor’s degree in foreign language . . . and literature from [redacted] University in 2016.” Similarly, in a prior request for evidence (RFE), the Director asserted that “the diploma from [redacted] University [demonstrates] that the [P]etitioner received an advanced degree in 2016.” The regulations define an “advanced degree” as “any United States academic or professional degree or a foreign equivalent degree *above that of a baccalaureate*.” 8 C.F.R. § 204.5(k)(2) (emphasis added). Although the regulations also contemplate a combination of a “United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty” as equivalent to an advanced degree, the Director did not address whether the Petitioner followed his 2016 baccalaureate degree with at least five years of progressive experience in the specialty. *Id.* Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See id.*; *see also 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”); *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Initially, the Petitioner described the endeavor as a plan to “seek employment as the [c]ommunications [d]irector at businesses in the much-needed field of freight transportation.” More specifically, the Petitioner asserted, “I plan to work as the [d]irector of [c]ommunications at [redacted] or a similar company.” The Petitioner further stated:

[M]y proposed endeavor has substantial national importance for several reasons. First, it would have national or global implications within my particular field. Second, it has significant potential to improve and further develop the trucking and logistic industry in the U.S., which has substantial positive economic effects. Third, it has significant potential to employ U.S. workers and has other powerful positive economic impacts, especially in economically depressed areas of the United States. Fourth, my endeavor will broadly enhance societal welfare or cultural enrichment. Finally, my endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives.

Despite repeating language from *Matter of Dhanasar*, however, the Petitioner did not initially provide specific information regarding how the proposed endeavor would accomplish those generalized assertions. *See generally Dhanasar*, 26 I&N Dec. at 888-91.

In response to the Director's RFE, the Petitioner submitted a document titled both "Business Plan" and "EB2 Personal Plan," generally dated 2022, referring to the Petitioner as "vice president." The document indicates its purpose is to "highlight [the Petitioner's] potential contribution to the U.S. economy as a professional employed at [redacted] a trucking company, where he has been tasked with training drivers, communicating with partners, and overall management of the company." Despite one of the document's titles referring to it as a business plan, the document does not address the Petitioner's employer's operational plan. Instead, the majority of the document—pages eight through 32 of 33 total pages—provide generalized information about the "long-distance freight trucking industry," "local freight trucking industry," "truck driver shortage," "U.S. dependence on trucking industry," "demand for truck transportation," and the "impact of e-commerce market growth," without specifically addressing the Petitioner's employer's business or its operational plan. The remainder of the document pertains to the Petitioner, his "education," "professional experience," "professional development," "personal skills and qualities," and the "endeavor." Therefore, despite being copyrighted by [redacted] and one of its titles referring to it as "Business Plan," the document is the Petitioner's personal plan, not the Petitioner's employer's business plan.

The personal plan asserts that the Petitioner would "employ his communication, multitasking, and problem-solving talents to improve the operations of the company he works for by educating drivers to minimize road accidents and comply with Federal Motor Carrier Safety Administration's (FMCSA) standards." The personal plan further states:

In addition to training drivers, [the Petitioner] will also participate in training courses and trade events organized by FMCSA and the Department of Motor Vehicles, where he will be able to acquire additional industry knowledge, as well as expand his network of contacts which will prove beneficial to both the company he is employed at and the U.S. economy as a whole.

The personal plan adds that the Petitioner "will do research on sustainable and safety programs and technology, such as in-cab communications and the OnGuard™ collision mitigation system, and train U.S. drivers on how to implement them on tours." Although the personal plan asserts that the Petitioner intends "to help create a qualified workforce to address the ongoing truck driver shortage in the U.S.," we note that training drivers to be qualified is distinguishable from hiring drivers.

The Director acknowledged the Petitioner's submissions but concluded that "it is not apparent how the [proposed endeavor] has national importance."

On appeal, the Petitioner asserts not only that he "seeks employment in the field of the trucking industry" but also, for the first time, that his proposed endeavor entails "eventually owning and operating his own trucking company, which will be engaged in interstate transportation and will benefit interstate commerce."

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). 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).

Because the Petitioner's description of the proposed endeavor at the time of filing did not indicate it would entail "eventually owning and operating his own trucking company," as he asserts for the first time on appeal, his discussion of owning and operating a trucking company present a new set of facts that cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. Therefore, we need not address the Petitioner's assertions regarding owning and operating his own trucking company further.

Also on appeal, the Petitioner discusses generalized information regarding the freight trucking industry, which he asserts "emphasizes how [his] proposed endeavor has significant national and global impact, and considerable potential to employ U.S. workers and has other substantial positive economic effects" and, therefore, the record "clearly established that his endeavor on [sic] national importance and USCIS erred in finding otherwise."

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The Petitioner's focus on appeal on generalized information regarding the freight trucking industry to address whether his proposed endeavor may have national importance is misplaced. As noted, the relevant question for determining national importance is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* at 889. None of the generalized information the Petitioner discusses on appeal about the freight trucking industry—from the U.S. Department of Transportation's (DOT's) Federal Highway Administration, IBISWorld, TechNavio, Trucking Dot Org, the DOT's Bureau of Transportation Statistics, the U.S. Department of the Treasury, and other sources—specifically addresses the Petitioner, his proposed endeavor, and how it may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. Therefore, the publications that discuss generalized information about the freight trucking industry but do not discuss the Petitioner and his proposed endeavor do not establish whether the proposed endeavor may have national importance.

Turning to information in the record that discusses the Petitioner and his proposed endeavor, such information establishes that working for [REDACTED] training its employees, and managing its operations will benefit his employer, his coworkers, and his employer's customers or clients who use its transportation services. However, the record does not establish how the proposed endeavor of "work[ing] as the [d]irector of [c]ommunications at [REDACTED] or a similar company" will have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

As noted above, the Petitioner repeated language from *Dhanasar* in his statement submitted at the time of filing, asserting that his proposed endeavor will "have national or global implications within my particular field," it generally "has significant potential to improve and further develop the trucking and logistic industry in the U.S., which has substantial positive economic effects," and "it has significant potential to employ U.S. workers and has other powerful positive economic impacts, especially in economically depressed areas of the United States." However, the record does not establish how the Petitioner's endeavor of training truck drivers or researching "in-cab communications and the OnGuard™ collision mitigation system" will have "national or even global implications within a particular field," beyond merely repeating the language used in *Dhanasar*. *Id.* Likewise, although the Petitioner repeated language used in *Dhanasar* regarding endeavors with significant potential to employ U.S. workers, as we noted above, the proposed endeavor of training drivers to be qualified is distinguishable from hiring drivers, and the record does not establish how the proposed endeavor relates to a significant potential to employ U.S. workers. *See id.* Relatedly, although the Petitioner repeated language from *Dhanasar* regarding "substantial positive economic effects, particularly in an economically depressed area," the record does not elaborate on the economic effects the proposed endeavor of training truck drivers and managing [REDACTED] will have, which particular areas will be economically effected, and related information that would support a conclusion that the proposed endeavor will have "substantial positive economic effects, particularly in an economically depressed area." *Id.*

We further note that, although the Petitioner asserted that his "endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives," as we addressed above, the relevant question for determining national importance is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* at 889. The Petitioner's reference to "a matter that a government entity has described as having national importance or is the subject of national initiatives" in the context of determining whether the proposed endeavor may have national importance is misplaced because—regardless of whether a generalized industry or field may have national importance or is the subject of a national initiative—the record must nevertheless establish how "the specific endeavor that the [noncitizen] proposes to undertake" may have "national or even global implications *within a particular field*, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90 (emphasis added).

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See Bagamashad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.