



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

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

In Re: 24993021

Date: FEB. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a cargo and freight agent and 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 Texas 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 record did not establish that a waiver of the classification's job offer requirement 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 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 a 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.

II. ANALYSIS

The Director found that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree. The issue on appeal is whether the Petitioner has established that a waiver of the job offer requirement, and thus of labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the job offer requirement is warranted.²

With respect to the proposed endeavor, a petitioner must identify “the specific endeavor that [he] proposes to undertake.” *See Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner’s initial filing did not identify his proposed endeavor with sufficient detail. While it mostly referenced his intention to work as a cargo and freight agent, it also contained discussion of working as a sales representative or as an entrepreneur. The initial filing also alternately stated that he may open his own business or that he may seek employment on the job market.

The Director issued a request for evidence (RFE) to resolve this and other deficiencies. The Petitioner’s response to the RFE provided clarification that his proposed endeavor is to “set up a Cargo & Freight, and Commercial Representation company” and that the enterprise will offer “Cargo & Freight and Commercial Representation services so that regional companies can enhance the trade of products.” The Petitioner’s business plan also primarily discusses establishing a cargo and freight business. As such, despite the lack of clarity in the record, we conclude that the Petitioner’s proposed endeavor is to establish and direct his own business, rather than to find employment as a cargo and freight agent.³

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).

² While we do not discuss each piece of evidence or address each argument made, we have reviewed and considered each one.

³ Moreover, were we to conclude that the Petitioner’s proposed endeavor is to find employment as a cargo and freight agent, this would undercut his eligibility for the underlying EB-2 visa category. To qualify as an advanced degree professional, a noncitizen must be a member of the professions, with “profession” defined as an occupation listed in section 101(a)(32) of the Act, or an occupation that requires a bachelor’s degree for entry into the occupation. *See* 8 C.F.R. § 204.5(k)(2). Cargo and freight agent is not an occupation listed at section 101(a)(32) of the Act. Additionally, the O*NET OnLine summary for the occupation states that the educational requirement for a cargo and freight agent is typically a high school diploma. *See* O*NET OnLine Summary Report for “43-5011.00 – Cargo and Freight Agents,” <http://www.onetonline.org/link/summary/43-5011.00>. As such, it does not appear that a cargo and freight agent would be considered a member of the professions. The record also does not establish that the Petitioner qualifies for the EB-2 category as an individual of exceptional ability, however we will not address that further as the Director did not make a finding as to exceptional ability and it is not an issue on appeal. The Petitioner must address eligibility for EB-2 classification in any future filings.

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Director concluded that the Petitioner did not demonstrate his eligibility under the first prong, because he did not establish his proposed endeavor’s national importance. We agree.

In support of his endeavor’s national importance, the Petitioner contends that cargo and freight services, logistics, and commercial representation are large industries that contribute significantly to the U.S. economy. He also states that small businesses — such as the one he intends to operate — are important to the economy. The record does not include sufficient documentary evidence to support these claims. As stated above, the Petitioner bears the burden of proof to demonstrate his proposed endeavor’s national importance. *Matter of Chawathe*, 25 I&N Dec. at 375. Although some of the claims in the Petitioner’s brief appear to be pulled from online sources, the Petitioner did not include in his filing copies of the actual information from these websites. This is insufficient, because *Matter of Chawathe* contemplates that a petitioner submit “relevant, probative, and credible evidence” in support of his claim. *Id.* at 376.

Nevertheless, we acknowledge the Petitioner’s arguments as to the importance of these industries but conclude that they address the substantial merit of his proposed endeavor, rather than national importance. In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” *See Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner also claims that his proposed endeavor has national importance because it will directly create jobs and have indirect economic benefits by helping his client businesses operate more efficiently. This argument is not supported by the evidence in the record. Specifically, the Petitioner’s business plan projects that his business will employ two individuals by the end of year three, which does not demonstrate the “substantial positive economic effect” that is required for national importance. *Id.* at 890. Moreover, the plan does not explain the source of the necessary upfront investment costs to establish the business and does not have a credible methodology as to its assumed expenses and projected income. For example, the plan estimates an initial yearly income of \$43,740.00. This amount appears to be based on the Department of Labor’s Bureau of Labor Statistics’ wage data for the Cargo and Freight Agent occupational category, which estimated \$43,740.00 to be the occupation’s median annual wage in 2018 (as cited by the Petitioner in his filing). However, the business plan does explain why this amount is a reasonable estimate for the endeavor’s initial yearly income. We also note that the Director’s decision refers to the Petitioner’s initial business plan and a modified plan submitted in response to the RFE. In comparing the two business plans, they appear to be identical documents, both dated August 2020. If there are minor changes to the plan submitted in the RFE response, the changes are not material and do not address the plan’s initial deficiencies.

In his RFE response and on appeal the Petitioner asserts that he now intends to hire four workers within the first year of business operations. He states on appeal that he was seeking to be conservative in his initial filing because “we faced a pandemic, and the future was very uncertain.” He further

states that after “receiving the Employment Authorization Document (recently), I feel more comfortable and secure in implementing my Business Plan and being able to hire American workers (in more significant numbers), in addition to generating indirect jobs as well.” We will not consider events that arose after the initial filing of the I-140 Petition. A petitioner must establish eligibility at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved when a beneficiary, initially ineligible at the time of filing, becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

He also claims on appeal that [redacted] Florida, where his business will be based, is an economically depressed area due to its elevated poverty and unemployment rates relative to the national average. The Petitioner does not cite a source for the data provided, but assuming the accuracy of the Petitioner’s information, he does not establish that his endeavor, with its planned two to four workers, will significantly impact the economy in [redacted] Florida.

In *Dhanasar* we concluded that STEM teaching has substantial merit in relation to U.S. educational interests, but that the petitioner did not demonstrate that the activities of one individual STEM teacher would impact the education field more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. The same is true here. The Petitioner has not established that the benefits of his proposed endeavor will extend beyond his own business or its clients to impact the industry or field more broadly. He does not claim to have created an improvement or advancement to logistics processes; rather, he seeks to establish and run his own small business. Even if he will employ workers, he has not shown that his endeavor has the potential for substantial positive economic effects in an economically depressed area. *Id.* at 890.

The Petitioner’s letters of support, written by his own professional associates or customers, also do not establish the national importance of his proposed endeavor. Primarily, the letter writers speak to his effectiveness and dedication to his work as a cargo and freight agent and describe him as an excellent negotiator and problem solver. By contrast, the petitioner in *Dhanasar* submitted expert letters from individuals holding senior positions in academia, government, and industry that described the national importance of the petitioner’s specific area of research. None of the Petitioner’s letter writers describe in detail the proposed endeavor or its potential impact. They alternately provide a general recommendation of the Petitioner as an employee or state that they believe he merits approval for lawful permanent residency.

Finally, the expert opinion letter from Dr. [redacted] Ph.D., does not articulate how the proposed endeavor will have national importance, nor does it define the proposed endeavor. Although Dr. [redacted] concludes that the endeavor will have national implications and provide substantial economic effects, he does not persuasively state the basis for these conclusions. For example, Dr. [redacted] opines that the proposed endeavor has national or global implications because the Petitioner “will play a critical role in the marketing process in different segments that involve technical sales, directly impacting a number of companies and revenues in the United States.” He also states that the Petitioner is “well-qualified to organize the marketing area for U.S. businesses” and “proficient in optimizing production for businesses in the United States.” But these activities are not clearly related to the Petitioner’s proposed endeavor of running a cargo and freight business. Additionally, Dr. [redacted] opines that the proposed endeavor will have a substantial positive economic impact because the Petitioner will “disseminate his knowledge to teach other professionals to take a number of steps

to educate new buyers and expand companies' portfolios," and that the Petitioner will "educate people on how to implement strategic methodologies and plans," and will participate "as a speaker in important events in the United States." Again, these activities are not consistent with the description of the proposed endeavor elsewhere in the record.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the expert opinion letter is of little probative value as it does not explain the proposed endeavor's national importance in a way that is in accord with the other information in the record.

On appeal, the Petitioner claims that with the COVID pandemic and the war in Ukraine, "we can witness the global crisis in the area of logistics. The shortage in several areas was notable worldwide. We can see empty shelves and increases in the price of gasoline." As addressed above, we will not consider events that arose after the filing of the petition. Moreover, the Petitioner has not provided documentary evidence of shortages and global supply chain issues. Nevertheless, we acknowledge the Petitioner's argument, and we conclude that it provides a recent example of the importance of the logistics industry in general. Again, this speaks to the substantial merit of the proposed endeavor, which is not at issue on appeal.

The Petitioner also asserts on appeal that his work with Brazilian companies "had an impact at the regional level, and according to the project developed, at a national level in Brazil." However, the Petitioner has not provided documentary evidence to support this claim. He provided copies of some invoices and service contracts from his Brazilian company to its clients, photographs of himself with business associates, untranslated newspaper clippings, and a letter from the company's accountant regarding its income. As discussed above, he provided letters from business associates who used his company's services and were satisfied. This evidence helps establish that the Petitioner operated an active business that provided services to its clients in Brazil; it is not sufficient to establish work of national importance.

Moreover, even if the Petitioner provided evidence that his company in Brazil had a positive economic impact at the regional level, this would not satisfy the requirement that his proposed endeavor in the United States is of national importance. Again, the Petitioner's proposed endeavor is to establish a cargo and freight business that will offer services to local businesses and employ two to four workers in the coming years. An endeavor of that kind does not have significant potential to employ U.S. workers or to have other substantial positive economic effects. *See Matter of Dhanasar* 26 I&N Dec. at 890.

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 acknowledge the Petitioner's arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the Petitioner is not eligible under the first prong, we will not address those arguments here. 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) (“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 alternative issues on appeal where the applicant is otherwise ineligible).

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 that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.