U.S. Citizenship and Immigration Services

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

In Re: 32289797

Date: AUG. 30, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a truck driver, 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 Petitioner did not establish eligibility for a national interest waiver. The matter is now before us on appeal pursuant to 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.

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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 discretion, 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 determined that the Petitioner qualifies for EB-2 immigrant classification as an advanced degree professional, and we will not disturb this determination.[1] The remaining issue, therefore, is whether the Petitioner has met his burden of proof to establish that he merits a discretionary waiver of the job offer requirement "in the national interest." For the reasons discussed below, we conclude that he has not.

The Petitioner indicated in Part 6 of the instant Form I-140, Basic Information About the Proposed Employment, that he intends to work as a "transportation, storage and distribution manager/entrepreneur," and that his job will be to "plan, direct, or coordinate transportation, storage, or distribution activities in accordance with organizational policies."

In a business plan submitted with the Form I-140, the Petitioner specified that his proposed endeavor relies on developing a corporation (C-C-)[2] a "transportation services firm that provides dry cargo freight truck transportation outsourcing services and long-haul reefer truck transportation outsourcing services planned to be headquartered in Illinois with one business unit in Texas." He also submitted a separate affidavit, clarifying that he is "the sole Partner/Owner of [C-C-], LLC" and that his main responsibilities include but are not limited to practicing safe driving habits, being productive, conducting pre-trip inspection, taking care of personal health, observing all government and company regulations at all times, and maintaining a logbook.

In addition to the business plan and affidavit, the evidence in support of the Petitioner's national interest waiver request includes his resume, membership and training certificates; employment verification, recommendation, and investor letters; general information about logistics and supply chain management trends; industry reports and articles; and articles about immigrant entrepreneurs, immigrant workforce, and future immigrant jobs growth.

In denying the Form I-140, the Director concluded that the Petitioner's proposed endeavor to work as an independent business owner and a truck driver for his own company was of substantial merit and national importance, but that the Petitioner did not establish he was well positioned to advance it and did not show that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and, thus labor certification.

On appeal, the Petitioner asserts generally that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law to [his] detriment." He states that the decision is therefore against policy and erroneous, as the preponderance of the evidence in his case does in fact demonstrate that he meets all three national interest waiver criteria set forth in *Dhanasar*. Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 376; *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the "preponderance of the

[1] The record includes evidence that in 2008 the Petitioner obtained a foreign equivalent of U.S. bachelor's degree of engineering in mineral processing technology from the [redacted] of Science and Technology, as well as evidence of at least five years of progressive experience as a mineral mining engineer. *See* 8 C.F.R. § 204.5(k)(2).

[2] We use initials for privacy.

evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 *USCIS Policy Manual* E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that the evidence he submitted to demonstrate eligibility for a national interest waiver meets this standard, he does not identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying his Form I-140. We are therefore unable to meaningfully address the Petitioner's general assertion alleging the improper standard of proof application in his case.

The Petitioner next asserts that the Director did not give due regard to the evidence, which he claims establishes that he is well positioned to advance his proposed endeavor, as required under the second prong of the *Dhanasar* framework. He avers that he also meets *Dhanasar's* third prong, because he has demonstrated that the benefit to the United States from his prospective contributions to the transportation industry will be concrete and substantial even if other U.S. workers are available, and that the need for his services is sufficiently urgent to waive the labor certification process.

A. Substantial Merit and National Importance

As an initial matter, although the Director concluded that the Petitioner satisfied the first *Dhanasar* prong, substantial merit and national importance, the record does not sufficiently support this conclusion. The Director stated in the decision that the Petitioner established his "proposed endeavor is of substantial merit and national importance," because he had "submitted articles which relate to [his] proposed endeavor and appear to support [his] claims that [his] proposed endeavor is of substantial merit and national importance." However, the decision does not include any evidentiary analysis or reasoning underlying this summary statement. Similarly, in the preceding request for evidence the Director indicated only that the Petitioner "made claims as to the substantial merit and national importance of [his] proposed endeavor. . .[,] submitted articles related to information about [his] proposed endeavor's substantial merit and national importance, a business plan, and an expert opinion letter," and that "[t]his evidence sufficiently demonstrate[d] how [his] proposed endeavor has both substantial merit and national importance."

We observe, however, that the first prong of the *Dhanasar* framework , substantial merit and national importance, focuses on the "specific endeavor that the [noncitizen] proposes to undertake," and evidence of the "potential prospective impact" of the noncitizen's work rather than generalizations about the importance of an industry, field, or profession. *Dhanasar*, 26 I&N Dec. at 889. Here, neither the articles about freight trucking industry in general nor the employment verification, investor, and other letters address the Petitioner's specific endeavor.

For example, a fellow truck owner-operator working for M- Trans Inc. states in his letter that "[the Petitioner's] contributions to the transportation industry and his ability to adapt and excel in different professional roles make him an outstanding candidate," that he "is the person of great value who has made a significant investment in the field of transportation," and that "[h]is presence in the United States has the potential to make a substantial impact on the U.S. transportation industry, contributing positively to the national interest." However, he does not explain the basis for these statements, and the Petitioner has not provided evidence to show the extent of his contributions to the transportation industry while working as a long distance truck driver for a freight trucking company and his own business. Similarly, a potential investor from Mongolia indicates in his letter that he is committed to

investing in the Petitioner's company but does not provide any details about the Petitioner's undertaking. The Petitioner's former co-workers describe his work performance as a long distance truck driver, a restaurant assistant manager, and a mineral laboratory technician but do not mention his proposed endeavor in the United States. As such, the letters do not show how the Petitioner's proposed endeavor of operating a long distance cargo trucking and storage business and working as a truck driver may be of substantial merit and national importance. Lastly, we cannot give significant weight to an "Expert opinion letter for the classification as EB-2" from an associate professor of business administration, marketing and management at a Tennessee university (the professor) as evidence that the Petitioner's proposed endeavor meets this criterion. The professor opines that "the weight of evidence favors granting [the Petitioner] National Interest Waiver because he satisfies the three-prong test outlined in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016 'Dhanasar')." He further states that based on his "education and professional experience in business administration he is well-qualified to provide an opinion regarding the level and significance of the [Petitioner's] ability, in addition to evaluating the appropriateness of granting him a National Interest Waiver." The professor clarifies that he offers this opinion "as an independent expert, never having professionally or personally engaged with the [Petitioner]" and further states that "[r]ecognizing [the Petitioner's] performance in the field of cargo/freight transportation, [he] render[s] his highest opinion of [the Petitioner's] exceptional contributions, unique abilities, and the value [the Petitioner] will have to the U.S. workforce." The remainder of the professor's opinion consists of a self-described "analysis and advisory evaluation of [the Petitioner's] exceptional ability and eligibility to receive a National Interest Waiver" under the *Dhanasar* framework, based on the Petitioner's own statements in the business plan and resume, as well as the information in the industry reports about the importance of the transportation industry and demand for freight transportation services. The professor concludes that the Petitioner's work has both substantial merit and national importance; that he is well-positioned to advance his proposed endeavor "through "his education and hands-on work experience"; and that "in granting this waiver the United States has an opportunity to directly benefit from [the Petitioner's knowledge and expertise in the field of cargo/freight transportation. . .." We observe, however, that there is nothing in the letter or supporting evidence to suggest that evaluating an individual's eligibility for an immigration benefit is within the professor's area of expertise. Moreover, the basis for the professor's statements about the Petitioner's contributions, education, work experience, and performance in the field of cargo freight transportation is not clear, as he confirms that he has never engaged with the Petitioner professionally or personally and he does not claim to be familiar with the details of the Petitioner's specific proposed endeavor. The professor's opinion, therefore, does not have significant probative value with respect to the proposed endeavor's substantial merit and national importance and the Petitioner's eligibility for the national interest waiver in general.

Furthermore, in determining whether a proposed endeavor has national importance "we look for broader implications" of the proposed endeavor and consider whether "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field" or whether it "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar*, 26 I&N Dec. at 889-90.

The Petitioner indicated in his business plan that he specifically chose "to define the location for [his company] in underutilized business zones . . . in the States of Illinois and Texas" because he "wants to take a stand and impact generating jobs for U.S. workers in these underutilized business zones . . .,

improving the wages and the working conditions for the U.S. Workers, helping the Local Community bring investments to the region and economic development" and "[a]t the same time, providing Transportation Services in the [United States], [and] improving U.S. economy." The Petitioner further indicated that as the company's CEO he would hire unspecified numbers of transportation, storage, and distribution managers; sales representatives, laborers and stock, freight, and materials movers; janitors and cleaners; heavy and tractor-trailer truck drivers; general and operational managers; bus and truck mechanics and diesel engine specialists; administrative assistants, accountants, and auditors. He stated that the impact of his proposed endeavor "is evident by generating (20) direct and (38) indirect jobs for U.S. workers across the States of Illinois and Texas which has the potential to attract investment and expand throughout the U.S. in the following years." The Petitioner specified that he intends to invest his savings of $250,000 in the company the first year and that he will reinvest part of the profits generated in the next four years, a total of $950,000. According to the business plan, the Petitioner's role will be that of the company's CEO and transportation, storage, and distribution manager, and the company will generate a total revenue of $11.9 million in five years with the projected net income of $1.31 million, and an expected payment of $369, 000 in federal tax income.

Aside from the Petitioner's own claims, however, the record does not contain evidence to substantiate his company's staffing and revenue projections. The Petitioner also does not explain how creating a total of 58 jobs in Illinois and Texas "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area," or how working as a CEO, transportation manager, and truck driver for his own company will impact the freight transportation industry more broadly. *Dhanasar*, 26 I&N Dec. at 889-90.

Given these evidentiary deficiencies, we cannot conclude that the Petitioner has met his burden of proof to establish his proposed endeavor's substantial merit and national importance. Accordingly, we will withdraw the Director's summary conclusion on this issue.

B. Well Positioned to Advance the Proposed Endeavor

The Petitioner also has not adequately demonstrated that he meets the second prong of the *Dhanasar* framework. To determine whether a petitioner is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Dhanasar*, 26 I&N Dec. at 890. *See also generally* 6 *USCIS Policy Manual*, *supra*, at F.5(1) (providing a non-exhaustive list of evidence that may demonstrate that a person is well positioned to advance a proposed endeavor).

The Director determined that the evidence was insufficient to establish that the Petitioner met the above criterion, because it did not show that he gained recognitions for significant contributions to the field of his endeavor, that he had a leading, critical, or indispensable role in the endeavor or similar endeavors, or that his expertise has been recognized to be significantly above others in the field. Specifically, the Director considered the Petitioner's resume, his training certificate, as well as the expert opinion and support letters discussed above but found them inadequate to show that his work had influenced the field of his proposed endeavor. The Director acknowledged that the intent and investor letters indicated that there were individuals who supported the Petitioner's undertaking but

ultimately found that the record as a whole did not demonstrate he was well positioned to advance his proposed endeavor. The Petitioner has not overcome this finding on appeal.

The Petitioner does not identify any specific factual or legal errors in the Director's evaluation of the evidence as it relates to the second prong of the *Dhanasar* framework. Rather, he references his business plan and resume and asserts generally that both provide "a comprehensive insight into his remarkable career journey, emphasizing notable achievements and key milestones within the transportation and mining engineering sectors." He avers that his "proficiency in navigating logistical challenges, executing large-scale transportation operations, and applying innovative technologies is of substantial national importance," and his "blend of hands-on experience as a truck driver and owner-operator, alongside a deep understanding of engineering principles gained during his tenure as a mining engineer and laboratory supervisor, equips him with a diverse skill set crucial for success."

Although in his resume and business plan the Petitioner describes himself as an accomplished mining engineer and entrepreneur with over 14 years of experience in supply chain and transportation, he does not explain the relevance of his background in mineral mining to his proposed work as either a "transportation, storage and distribution manager/entrepreneur," or as a business owner and a truck driver for his own company. He also does not point to any specific evidence that might support his claim of longtime experience in supply chain and transportation, expertise in operating and managing complex transportation systems, navigating logistical challenges, and applying innovative technologies in the area of his proposed endeavor. The Petitioner's resume reflects that he began working in the transportation industry in 2018 as a truck driver, that he was employed in Mongolia in the mineral mining sector before entering the United States as a nonimmigrant visitor (B-2) in 2015, and that he thereafter worked as an assistant manager at a restaurant and a delivery driver until late 2017. Absent additional detailed information and evidence of the Petitioner's claimed skills, experience, and expertise in the field of transportation, logistics, storage, and business management, the record remains insufficient to show that he has the education, skills, knowledge, and record of success in related or similar efforts to advance his proposed endeavor.

We acknowledge the prior submission of two certifications related to the Petitioner obtained after filing the instant Form I-140, but they do not cure the lack of probative evidence concerning his skills, knowledge and record of success in the field of his proposed endeavor. The Petitioner states that the certifications attest to his dedication to professional development and adherence to industry-specific skills and knowledge and also serve as a testament to his active role in advancing his proposed endeavor. We are not persuaded. A training certificate from Mongolia indicates that sometime in 2023[3] the Petitioner "successfully learned with team in training lesson and practice for 8 hours of total employee for industrial accident, prevention against pain due to profession, labor safety and hygiene." The Petitioner does not explain where and for what purpose he completed this training, or how it is relevant to his claim of being well positioned to advance his endeavor. While he also presented a certificate of membership indicating that in May 2023, he "has completed the organization's mission and is now a member of the US Mongol Truckers Association" he offers no information about the organization and the relevance of his membership to advancing his proposed endeavor.

[3] The certificate shows "Date: 2023."

The Petitioner asserts that the evidence shows he is actively advancing his proposed endeavor, because the company's official corporate documents delineate the legal and operational framework under which it functions, and the company's website further solidifies its presence, showcasing services, mission, and strategic vision thereby establishing a digital and public-facing representation of his business activities. In support, he references previously provided tax return, certifications, and letters.

The record reflects that in March 2022 the Petitioner established his company, C-C- (headquartered at his residential address), and that he filed a U.S. Income Tax Return for an S Corporation the same year (reporting 0 net income). The printouts from the company's website indicate that it "provide[s] dry cargo and flatbed services in the USA" and that it is "actively hiring company drivers and owner-operators." These documents alone, however, do not show whether the Petitioner's services are of interest to potential customers or users, and they do not otherwise indicate how the actions he took signify progress towards achieving his proposed endeavor.

The evidence is also insufficient to show that the Petitioner's proposed endeavor has generated interest or support from potential investors, or other relevant entities or persons. The record includes a letter from the acting director of B- K-, LLC, a Mongolian company described therein only as "a consistent force in the realms of foreign trade and road construction." The acting director declares the company's commitment to invest in the Petitioner's business and expresses confidence that "this initiative will significantly contribute to strengthening economic ties between our two nations." However, the letter does not contain any specific information about B-K-, LLC,[4] the nature and extent of the intended investment, or any details about what the company's cooperation with the Petitioner's business in the United States might look like. Absent such information, the investment letter is not sufficient to demonstrate the company's genuine interest to invest in the Petitioner's proposed endeavor. The letter from another company, P- Design Build, stating their intent to set up a partnership with the Petitioner is similarly insufficient. In this letter, an individual identified as a design architect indicates that the company "decided to choose C-C- for their cargo transportation and logistics forwarding for their construction needs." The letter, however, contains no information about P- Design Build or any other information to indicate that they have a need for the Petitioner's services and the writer is authorized to make hiring decisions on the company's behalf. Without additional details, the letters are inadequate to show that potential investors, or other relevant entities or persons are genuinely interested in supporting or investing in the Petitioner's undertaking.

Based on the above, we conclude that the Petitioner has not shown that he is well positioned to advance his proposed endeavor.

To summarize, the preponderance of the evidence in the record is not sufficient to establish that the Petitioner's proposed endeavor has substantial merit and national importance, and that the Petitioner is well positioned to advance it, as required under the first and second prongs of the *Dhanasar* precedent decision. The Petitioner therefore has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we need not reach and hereby reserve the appellate arguments concerning his eligibility under the third prong

[4] The investment letter is accompanied by a certification that the acting director "is the registered legal owner of immovable property of [redacted] for private house," as well as "immovable property of [redacted] land and . . . unit used for family need," and a 2011 "vehicle with a regular trunk" imported in February 2022 and designated as a "truck." The Petitioner does not explain the relevance of these documents to B-K-, LLC's expressed interest to invest in his business.

of the *Dhanasar* framework. *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 an applicant is otherwise ineligible).

## III. CONCLUSION

The Petitioner has not met his burden of proof to show that he satisfies the national waiver criteria under the first and second prongs of the *Dhanasar* analytical framework. Consequently, he has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

**ORDER:** The appeal is dismissed.