U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36609921

Date: FEB. 26, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a logistics/trucking driver and manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner had not established his eligibility for the underlying EB-2 classification as an advanced degree professional or as an individual of exceptional ability and did not address whether the Petitioner had established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director then dismissed the Petitioner's combined motions to reopen and to reconsider. The Director subsequently granted his second combined motions to reopen and to reconsider and issued a request for evidence. Upon review of the evidence, the Director again denied the petition, concluding that while the Petitioner had demonstrated he was an advanced degree professional, he had not established his eligibility for a national interest waiver of the job offer requirement attached to this classification. 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 qualify for a national interest waiver, a petitioner must first show eligibility 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.

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. 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,[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.

Id.

II. ANALYSIS

A. EB-2 Classification

The Director determined, without explanation, that the Petitioner has established he is an advanced degree professional. We disagree. In order to meet the requirements of a member of the professions holding an advanced degree, a petitioner must establish they are both a "member of the professions" and "hold[] an advanced degree." 8 C.F.R. § 204.5(k)(1); see generally 6 USCIS Policy Manual F.5(A)(1), https://www.uscis.gov/policymanual (providing, as guidance, requirements for establishing one is an advanced degree professional or the equivalent); Matter of Shin, 11 I&N, Dec. 686, 688 (Dist. Dir. 1966) (noting that the mere acquisition of a degree alone does not qualify a person as a member of a profession). A profession is one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), 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). The intended occupation through which the person plans to advance the proposed endeavor must meet the definition of a profession. See Matter of Dhanasar, 26 I&N Dec. at 891, 8 C.F.R. § 204.5(k)(2); see generally USCIS Policy Alert PA-2025-03, Second Preference Eligibility for National Interest Waiver Petitions 7 (Jan. 15, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250115-Employment-BasedNationalInterestWaivers.pdf (providing, as guidance, the requirements of a member of the professions holding an advanced degree).

On his Form I-140, the Petitioner indicated his intention to work in the United States as a truck driver and logistics/trucking manager, under the Standard Occupational Code (SOC Code) 11-3071. In support of his petition, the Petitioner submitted printouts from the Department of Labor's Occupational Outlook Handbook (Handbook) relating to SOC Codes 53-3031 and 53-3032, which describe the truck driving occupation and indicate that the typical entry-level education for this occupation is a high school diploma or equivalent. While printouts were not included for SOC Code 11-3071, our review of the Handbook indicates SOC Code 11-3071 relates to transportation, storage, and distribution managers, where the typical entry-level education for the occupation is also a high school diploma or equivalent.[2]

[1] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[2] See Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Outlook Handbook, Transportation, Storage, and Distribution Managers, https://www.bls.gov/ooh/management/transportation-storage-and-distribution-managers.htm).

Because the Petitioner has not demonstrated that the occupation of logistics/trucking manager requires a U.S. baccalaureate degree or foreign equivalent as "the minimum requirement for entry into the occupation," we withdraw the Director's conclusion that the Petitioner is a member of the professions as defined at 8 C.F.R. § 204.5(k)(1)-(2).

In the record before the Director, the Petitioner also claimed that he qualifies for EB-2 classification as an individual of exceptional ability. However, the most recent decision by the Director did not analyze this issue. Because we conclude below that the Petitioner is not eligible for a discretionary waiver of the job offer requirement "in the national interest," which is dispositive of this appeal, we reserve the issue of whether the Petitioner is an alien of exceptional ability and thereby eligible for the underlying EB-2 classification. 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 an applicant is otherwise ineligible).

B. National Interest Waiver

The Petitioner is a logistics/transportation manager and entrepreneur who intends to work as a truck driver and open his own trucking company in the United States. *Dhanasar's* first prong relates to substantial merit and national importance of the specific proposed endeavor. Matter of Dhanasar, 26 I&N Dec. at 889. The Director determined the Petitioner had established the substantial merit of his proposed endeavor but had not established its national importance. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id. In Dhanasar, we noted that, in assessing national importance, "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 at 890. 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.

On appeal, the Petitioner asserts the Director did not consider the potential impact of his proposed endeavor and relies on his business plan describing the strategies his company intends to implement to remain competitive. However, the Petitioner does not explain how his proposed endeavor would offer benefits extending beyond his clients to impact the transportation field more broadly. Furthermore, we acknowledge that the Dhanasar decision contemplates "[a]n undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. at 893. However, the Petitioner has not established the extent to which his proposed endeavor's strategies in, for example, cost management, driver shortage mitigation, supply chain challenges, recruitment, differ from or improves upon those already available and in use in the United States such that his proposed endeavor would have national or global implications within his field or for the United States.

He also highlights the importance of the transportation industry, the critical role trucking and logistics managers play in the industry, and references articles submitted in the record below in support of his assertions. However, merely working in an important field or profession is insufficient to establish

the national importance of the proposed endeavor. See Dhanasar, 26 I&N Dec. at 889 (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 specific endeavor that the foreign national proposes to undertake").

The Petitioner further asserts that his proposed endeavor has significant potential to employ U.S. workers and has other substantial positive economic effects, particularly in an economically distressed area. He states, for example, that his company will reach a total number of 77 employees by year five, with payroll expenses to increase to over four million and that over 50 % of the employees will be U.S. residents from economically distressed areas of New York, New Jersey, Pennsylvania, and Connecticut, including veterans. However, the Petitioner did not present supporting evidence corroborating these assertions and projected figures in the record below or on appeal. Moreover, the Petitioner did not demonstrate how his company's claimed revenue and employment projections, even if supported, would provide substantial economic benefits to the mentioned areas or the U.S. economy at a level commensurate with national importance.

The Petitioner also asserts that his endeavor will contribute to the U.S. economy through community involvement, such as, providing donations, starting a commercial driver license school, and organizing cleanliness drives. However, the Petitioner does not provide details on appeal or in his business plan of, for example, the type and amount of donations to demonstrate broader implications of his proposed endeavor. In Dhanasar, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Id. at 893. Similarly, the record here does not show through supporting documentation how the Petitioner's endeavor of opening up a commercial driving school would extend beyond his trainees to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

For these reasons, the Petitioner has not demonstrated that, beyond the limited benefits provided to his prospective clients, the Petitioner's proposed endeavor has broader implications in the transportation field or that it has the significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area for instance, rising to the level of national importance.

Accordingly, the Petitioner has not demonstrated the national importance of his proposed endeavor under the first Dhanasar prong, and therefore eligibility for a national interest waiver. The Director also determined the Petitioner had not established the second and third Dhanasar prongs. As our finding is dispositive of this appeal, we reserve the Petitioner's arguments regarding whether he has demonstrated these other eligibility grounds. See INS v. Bagamasbad, 429 U.S. at 25 (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. at 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.