U.S. Citizenship and Immigration Services

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

In Re: 30560289

Date: APR. 02, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

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 he 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.

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. If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 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,[1] grant a national interest waiver if the petitioner demonstrates that:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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 as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner indicated that it involves "the design, development, and dissemination of the [redacted]– a one-hand, one-step eyewear protection apparatus of his own making that he invented for the use of disabled persons who no longer have the full use of both of their hands or for able bodied people who are limited in the use of both hands at any given time, such as when they [are] driving on the road." He asserts that the device he created "will replace the standard two-handed eyewear case so that it can be used by persons who must function with only the partial use of their hands but who will still need to protect and manipulate everyday eyewear of all kinds."[2]

In addition to company formation documents and information about his eyewear protection device, the Petitioner submitted the business plan for his company, [redacted] This business plan includes industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company will employ "62 assembly, packaging and shipping production workers, and at least 10 administrative and sales employees," but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while his plan offers revenue projections of $1,100,458 in year one, $1,660,033 in year two, $3,219,360 in year three, $7,504,123 in year four, and $19,982,057 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

The record includes information about persons in the United States living with limb loss, the global need for eyeglasses, the worldwide eyewear market, apparel for people with disabilities, and stylish products for persons living with disabilities. We agree with the Petitioner that the submitted documentation establishes his endeavor has substantial merit. In determining national importance, however, the relevant question is not the overall importance of the industry in which the individual will work or the general societal benefits associated with developing products for individuals with disabilities; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor.

The Petitioner also provided letters of support from M-H-E-A-, M-S-B-, J-A-O-, J-L-H-, R-R-, B-B-, and W-G- discussing the commercial possibilities for his eyewear protection device, its ability to assist

[2] The record includes documentation relating to patent applications for this invention the Petitioner filed with the U.S. Patent and Trademark Office and European Patent Office.

individuals living with disabilities, and its potential to generate jobs. The Petitioner, however, has not provided evidence demonstrating that his proposed endeavor would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any new product has the potential to offer societal benefits or to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of his proposed endeavor stands to offer broader implications in the eyewear industry or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States. The letters of support do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in the eyewear industry, enhancements to societal welfare, or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not demonstrated that his undertaking "has the potential to employ U.S. workers" or "would impact the industry more broadly and sufficiently extend beyond its clients" at a level indicative of national importance.

On appeal, the Petitioner contends that his proposed endeavor stands to "have an impact on areas not only in the area of entrepreneurialism but in the areas of business, health, science, and technology." He argues that "[t]he potential prospective impact of his endeavor would impact the eyewear industry on a broad scale that sufficiently extends beyond [his] clients. The introduction of the [redacted] in the market would revolutionize the eyewear industry by making the current standard two-handed glasses case obsolete." The Petitioner further asserts that his endeavor offers job creation, an innovative product, self-sustainability, a model for legal immigration, and a precedent-setting narrative for other immigrants.

The Petitioner also claims that his undertaking has "national importance due to the impact it will have on societal welfare and on a matter that is the subject of national initiatives." He asserts that his [redacted] device will have a positive effect on societal welfare because it will provide an alternative method for eyewear protection for the many disabled and impaired persons in the U.S. and around [the] world who do not have the full functioning use of one hand." In addition, the Petitioner states that his company "will make significant donations of their product to charitable organizations with affiliations to persons in need of the device" such as "wounded soldiers and veterans of the U.S. military." He further contends that his proposed endeavor supports the Americans with Disabilities Act through distribution of a one-handed eyewear protection device that he claims "will have a direct effect on a significant portion of the U.S. population that suffers from a major disability."

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "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.* 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.* at 890.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. While the Petitioner's statements reflect his intention to manufacture an eyewear protection device and market it to potential customers, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that 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. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its future customers to impact the eyewear industry, societal welfare, U.S public health, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his endeavor stands to generate jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers Florida or the United States a substantial economic benefit through employment levels or business activity.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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).

## III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.