U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30185348

Date: APR. 5, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an 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 although the Petitioner qualifies as an advanced degree professional, the record did not establish that a waiver of the job offer requirement is in the national interest. 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.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant 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, the petitioner must then establish eligibility for 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: 1) the proposed endeavor has both substantial merit

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and the Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

and national importance; 2) the individual is well-positioned to advance their proposed endeavor; and 3) on balance, waiving the job offer requirement would benefit the United States.

The Director determined that the Petitioner qualifies for the EB-2 classification as an advanced degree professional, based upon his master's of business administration degree from [redacted] in [redacted] Ohio. Regarding the Petitioner's request for a national interest waiver, the Director found that the Petitioner established only the substantial merit of the proposed endeavor, and did not establish its national importance, that he is well-positioned to advance it, or that, on balance, waiving the job offer requirement would benefit the United States. The Petitioner proposes to establish an information technology (IT) consulting business based in Florida. The Petitioner states that the company will focus on strategic consulting in integrated management systems and related software.

In determining that the Petitioner did not establish the national importance of the proposed endeavor, the Director concluded that the record does not support the Petitioner's assertion that the proposed endeavor will contribute to the overall U.S. economy and generate both taxes and new jobs. The Director discussed the business plan and concluded that it does not demonstrate that the potential staffing levels, business activity, and related tax revenue stand to provide substantial economic benefits for Florida or the United States. The Director also found that the record does not contain sufficient evidence to establish that the business will operate in an area that is economically depressed. Finally, the Director concluded that the reports and articles submitted relate to the importance of the industry, rather than establishing the importance of the Petitioner's specific endeavor.

On appeal, the Petitioner contends that the Director did not sufficiently consider the evidence in the record. The Petitioner asserts that the evidence demonstrates that the business will be established in an economically depressed area, that it will generate jobs for U.S. workers, and that his past work has positioned him well to advance his endeavor.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Regarding the national importance of the endeavor, the Petitioner asserts on appeal that the company will operate in locations that are recognized as "historically underutilized business zones" and should therefore be considered economically depressed areas as contemplated by *Matter of Dhanasar*. The Petitioner also notes that the business plan estimates that the company will create 43 full-time jobs and earn approximately $25 million in gross revenue in the first five years. The Petitioner claims that this number of jobs and amount of revenue is significant enough to impact U.S. employment levels, business activity, and related tax revenue in those areas, and therefore rises to the level of national importance.

Upon de novo review, we agree with the Director that the record does not demonstrate the national importance of the proposed endeavor. Although the Petitioner asserts that the potential jobs and

revenue projected by the business plan rise to the level of national importance, we conclude that the plan does not sufficiently explain the basis for the stated projections. The business plan states that the Petitioner "has set high objectives" for the company and that its goal is to "deliver 135,000 hours of [c]onsultancy [s]ervices and 730 projects" within 5 years. The stated gross revenue projections, which are $345,000 in year 1 and $13.9 million by year 5, are based upon meeting this goal. But the plan does not explain how this goal was determined, how it will be achieved, or why it is a realistic one for the company's initial projected business activity. As to the projected 43 jobs that will be created, the plan similarly does not explain how this number was reached or estimated. Other than stating that the "revenue and cost estimates are based on the planned organic growth" of the company, the plan does not provide support for the stated financial projections.

Without further explanation as to the basis for these projections, we cannot assess whether the stated revenue estimates and job creation numbers are credible, and we conclude that the Petitioner has not met his burden to establish that his proposed endeavor stands to have "substantial positive economic effects" that would be commensurate with national importance. *Matter of Dhanasar*, 26 I&N Dec. at 890. Even if we were to assume that the job creation and revenue projections are credible, which we do not, the record also does not establish that the creation of 43 jobs in 5 years, even in an economically depressed area, has the potential for broad implications that would rise to the level of national importance. *See id.* at 889. The Petitioner did not provide evidence to establish that the potential benefit to the economy from this business will rise to the level of substantial positive economic effects required to establish national importance. *Id.*

Although the record reflects the Petitioner's experience in the field and his intention to provide valuable services to his clients, the Petitioner has not offered sufficient information or evidence to demonstrate that the prospective impact of the proposed endeavor rises to the level of national importance. The Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact the IT consulting industry or the U.S. economy at a level commensurate with national importance.

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 evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prongs. *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 the applicant is otherwise ineligible).

ORDER: The appeal is dismissed.