U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29832827

Date: APR. 5, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur who, along with his spouse, owns [redacted] a business registered in Florida, seeks second preference immigrant classification (EB-2) 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) (2022).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish 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. 8 C.F.R. § 103.3 (2022).

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 the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Matter of 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 Poursina v. USCIS*, 936 F. 3d 868, 870-76 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature); *see also Flores v. Garland*, 72 F. 4th 85, 88 (5th Cir. 2023) (joining

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. at 889-91.

II. ANALYSIS

The record shows that the Petitioner qualifies as a member of the professions holding an advanced degree. Specifically, on appeal, the Petitioner states that he is "a professional with an advanced degree in finance and international business" and offers evidence in support of this claim. The remaining issue to be determined is whether he has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

Upon de novo review, we conclude that the Petitioner's proposed endeavor has substantial merit but does not satisfy the national importance element under *Matter of Dhanasar*'s first prong. If the Petitioner does not meet the first prong, the record is dispositive in finding that he is ineligible for the national interest waiver, and we need not address the second and third prongs under the *Matter of Dhanasar* framework.

As explained in the Director's decision, the first prong – substantial merit and national importance – focuses on the specific endeavor that the foreign national proposes to undertake. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. We noted in *Matter of Dhanasar* 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.

On appeal, the Petitioner argues that his proposed endeavor has national importance in the field of business and entrepreneurship and thus satisfies the first prong under *Matter of Dhanasar*. He states that his proposed endeavor involves working as the chief executive officer for his company, [redacted] which provides "financial and international business consulting services to help small and medium-sized companies (SMEs) in different industries do business successfully locally and especially to penetrate international markets." According to a June 2022 business plan in the record, the Petitioner "endeavors to contribute to the U.S. economy by providing expert consulting services to [SMEs] in the U.S., helping them increase their sales, competitiveness, and performance, and successfully enter international markets." Page 6 of the business plan claims that his company, formed in 2021, "started its operations by servicing clients in Florida," and that beginning from year 2 of its operation, it will "start targeting clients in Georgia," "provide services

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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 is discretionary in nature).

throughout New York," as well as "in other regions of the United States, such as Texas and California," and then it will "operat[e] throughout the country." The Petitioner has presented letters of recommendation from individuals, discussing his educational background in law and business, and his professional experience in business management, operation, and entrepreneurship, as well as letters of intents, stating the intention of certain businesses to retain his company's services involving export operations.

In addition, the Petitioner claims on appeal that his proposed endeavor will include "providing [single mothers] with the basic tools necessary to bring their business ideas to reality with a free educational program that [his company] will develop [with] some non-profit organizations." The record includes a March 2023 letter from a church in Florida, indicating that the Petitioner's company had approached the organization to "develop a free training program [on entrepreneurship] for single mothers."

The Director reviewed the evidence on record and concluded that it "does not sufficiently establish that the [Petitioner]'s proposed endeavor is of national importance." The Director noted that the evidence fails to confirm that the nature of his proposed endeavor "extend beyond his company to impact the field more broadly" or that the "level of employment will have the potential to provide substantial positive economic effects to the region his business is located or to the nation." *See Matter of Dhanasar*, 26 I&N Dec. at 889-90.

On appeal, the Petitioner asserts that his proposed endeavor has national importance because his company "is specifically focused on supporting small and medium-sized businesses" and because his company plans to provide training to single mothers. He also references recommendation letters, and other materials – including those relating to awards, certificates, and trademarks – that confirm his educational and professional background. This evidence relates to the issue of whether he is well positioned to advance the proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889-91. As discussed above, however, the first prong under *Matter of Dhanasar* focuses on the national importance of the Petitioner's proposed endeavor, not his qualifications to advance the proposed endeavor. Thus, statements and evidence relating to his qualifications do not establish that his proposed endeavor satisfies the first prong.

Moreover, the record is insufficient to demonstrate that the Petitioner's proposed endeavor satisfies the first prong under *Matter of Dhanasar*. Specifically, the Petitioner has not shown that his proposed endeavor has national importance. *See id.*, 26 I&N Dec. at 889. While we acknowledge that his customers and clients might benefit from his consultant services and free training program, the record is insufficient to show that such benefit rises to the level of national importance or will likely impact the field of business and entrepreneurship more broadly. Although the letters of intent specify that the Petitioner's company will provide consultant services to import/export businesses, the record lacks evidence showing how such services will likely impact the field nationally or how the potential prospective impact has national implications within the field. Similarly, the Petitioner has not established how his proposed free training program for single mothers – which he claims on appeal will "allow [the individuals] to move forward with their families and hope for a better future" – will likely have a national level impact in the field of business and entrepreneurship.

Additionally, although the Petitioner claims that his proposed endeavor will result in job creation in the U.S., he has not presented sufficient evidence showing that it has "significant potential to employ

U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." See *Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner offers his business's 2022 tax filings, which does not indicate that the business had pay any salaries or wages to, or had hired, any employees. The Petitioner indicates that his company paid $89,000 in 2022 to a business that "provided external personnel to comply with the execution of contracts" for his company, but he has not specified how many jobs were created or shown that the level of job creation confirms the national importance of his proposed endeavor.

Additionally, pages 44 through 46 of the business plan claim that the Petitioner's business would hire 11 "in-house employees," and allege that the Regional Input-Output Modeling System (RIMS II) multipliers for "Management Consulting Services Industry in Florida" project "a final-demand impact in employment equivalent to 214 jobs in Year 5" of his business's operation. The Petitioner has not sufficiently demonstrated that RIMS II's broad category of "Management Consulting Services Industry in Florida" properly captures the potential impact of his proposed endeavor, which involves providing consulting services to import/export businesses and free training to single mothers. He has therefore not shown that general statistics on a broad category of economic activities confirms the national importance of his proposed endeavor. In short, the record is insufficient to establish the national importance of his proposed endeavor based on its potential job creation or impact on the U.S. economy.

On appeal, the Petitioner references reports and articles on the importance of SMEs and the import/export industry to the U.S. economy. We acknowledge that the Petitioner's proposed endeavor involves providing services to SMEs and free training to single mothers and has substantial merit. However, merely working in an important area of the economy is insufficient to establish the national importance of the proposed endeavor. The relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. In this case, for the reasons we have discussed, the Petitioner has not demonstrated the requisite national importance.

Accordingly, we find that the Petitioner has not satisfied the first prong of the *Matter of Dhanasar* precedent decision and he has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Matter of Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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 *Matter of Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.