U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29846300

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 and a professional in the field of international financial markets,[1] 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 qualified for classification as a member of the professions holding an advanced degree, but that he had not established 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

[1] According to the November 2022 statement from counsel, the Petitioner is "an accomplished professional with widespread expertise in the specialized field of international financial market, particularly in the foreign exchange sector."

waiver petitions. *Matter of Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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 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 Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. 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 agree with the Director that the Petitioner's proposed endeavor has substantial merit but does not satisfy the national importance element of *Matter of Dhanasar*'s first prong. If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs.

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.

According to the November 2022 statement from counsel, the Petitioner's resume, a business plan, and other evidence in the record, the Petitioner was a co-founder of [redacted][3] a Brazilian business in which he has a 4% ownership interest. Since 2021, he has been the chief economist for [redacted] a limited liability company in Florida which is owned by the Brazilian business. The Petitioner intends to continue this position in the U.S., noting that he "will provide executive leadership and operational expertise to advance [the Florida business's] financial technology to SME [small and medium enterprise] foreign exchange brokerages and money services businesses across multiple states in the United States." On appeal, the Petitioner indicates that the

[2] *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 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).

[3] The Petitioner's resume indicates that he worked for the Brazilian business from 2016 through 2021, as its head of treasury and chief economist.

Florida business "is a digital currency exchange broker," and that its "signature product, Simple, is the leading B2B digital currency exchange platform that offers individual foreign exchange brokers/agents a complete end-to-end solution to support their day-to-day operations from the sale of paper money to international remittances over a secure network."

The record includes an October 2022 letter from [redacted] the co-founder and director of the Brazilian business. He explained that the Florida business is a "regional office" of the Brazilian business, and that the Petitioner has been the Florida business's chief economist. Mr. [redacted] indicated that the Petitioner has "been responsible for leading and overseeing [the Brazilian] company's expansion in the United States" and "is tasked with establishing the company's commercial presence in the United States." [redacted] detailed the Petitioner's work as the chief economist, stating that he has "identified five (5) potential partners in the United States"; has overseen "the execution of a Share Purchase Agreement to acquire 40%" of a Florida-based business that conducts foreign exchange transactions; and has been "leading the pre-acquisition due diligence process" of a New Jersey-based corporation with money exchange licenses to conduct business in New Jersey, Georgia, Maryland and Massachusetts. According to the business plan, the Brazilian business has also formed a Texas company "to operate in the business of consulting and payments." [redacted] provided in his letter that the Petitioner's contributions "are critical to [the Brazilian business and its Florida office's] long-term success."

The record includes other letters from individuals who have worked with the Petitioner. These letters discuss the Petitioner's professional experience and state that he has contributed to the success of both the Brazilian business and its Florida operation.

The Director reviewed the evidence on record and concluded that the Petitioner failed to show his "proposed endeavor has implications beyond his current employer (or prospective employer or self-owned company), their business partners, alliances, and/or clients/customers and [his] prospective co-workers or workplace at a level sufficient to demonstrate the national importance of his endeavor." In other words, the Director determined that the Petitioner did not establish that his proposed endeavor has national importance, such that it may have "national or even global implications within a particular field," "has significant potential to employ U.S. workers" or "has other substantial positive economic effects" in the United States. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90.

On appeal, the Petitioner asserts that his proposed endeavor "has national importance" because "it has the potential to have a major impact on the field of international financial markets, particularly the foreign exchange sector in the United States." He claims that his current employer "offer[s] financial technology to small- and medium sized money services businesses," and that as its chief economist, he will "lead the development and integration of technology solutions that are aimed at optimizing the day-to-day operations of these businesses . . . , ensuring their competitiveness in the broader financial services market." He also alleges that his proposed endeavor will have a positive impact in the U.S. economy, including preserving and creating jobs, because his employer has partnered with U.S.-based businesses that are "located in SBA [Small Business Administration]-designated HUBZone areas."[4]

[4] The Small Business Administration (SBA) website provides: "The HUBZone program fuels small business growth in historically underutilized business zones with a goal of awarding at least 3% of federal contract dollars to HUBZone-

The Petitioner offers additional evidence on appeal, including a 2019 report entitled "Updated Employment Multipliers for the U.S. Economy," and materials relating to his employer.

The record is insufficient to satisfy 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. The Petitioner offers evidence showing that his employer has business partners and associates that are located in different U.S. States. But as *Matter of Dhanasar* explains, the focus of this prong is the national importance of the proposed endeavor, not its geographic area. *See id.*, 26 I&N Dec. at 889-90. While we acknowledge that the Petitioner and his employer's customers, clients or business partners have benefitted from his work as the chief economist, including his contributions to the platform Simple, he has not offered sufficient evidence demonstrating that the benefit to individual businesses rises to the level of national importance or that his proposed endeavor will likely impact the field of international financial markets more broadly. For example, although some businesses in the U.S. have used or are intending to use Simple, the record is insufficient to show that the technology has impacted the field nationally or that its potential prospective impact has national or global implications within the field.

Additionally, the Petitioner has not presented sufficient evidence showing that his proposed endeavor 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. On appeal, the Petitioner references the SBA HUBZone program, but has not shown that the program confirms the national impact of his proposed endeavor. The SBA program aims to award a certain percentage of federal contract dollars to HUBZone-certified companies.[5] The record does not indicate that the Petitioner's proposed endeavor involves HUBZone-certified companies or has any association to federal contracts. To the extent that he is arguing his proposed endeavor has the potential to positively impact historically underutilized business areas, in part, by preserving or creating jobs, the record does not include sufficient evidence showing any projected U.S. economic impact or job creation directly attributable to his proposed endeavor rises to the level of national importance or will likely impact the field of international financial markets.

We have reviewed the evidence in the record, including reports and articles on small and medium enterprises in the United States and international financial markets. We acknowledge that the Petitioner's proposed endeavor involves providing financial technology to small and medium sized money services businesses in the United States and has substantial merit. However, merely working in an important field 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.

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certified companies each year." The SBA website further explains that "[j]oining the HUBZone program makes [a] business eligible to compete for the program's set-aside contracts" and that "HUBZone-certified businesses also get a 10% price evaluation preference in full and open contract competitions." https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program, accessed on Mar. 5, 2024, a copy of the online material has been incorporated into the record of proceedings.

[5] *See supra* note 4.

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.