U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37718557

Date: APR. 09, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a sales manager, 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 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 record did not establish the Petitioner's eligibility for the requested national interest waiver. 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 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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Once 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 a 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.

II. ANALYSIS

The Director determined that the Petitioner qualified for the underlying EB-2 classification as a member of the professions holding an advanced degree. Therefore, the remaining issue is whether the Petitioner established eligibility for a national interest waiver under the *Dhanasar* framework.

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with the Director's conclusion that the proposed endeavor has substantial merit as it falls within the range of areas of substantial merit, namely business. *Id.* However, while the Petitioner has established that the proposed endeavor has substantial merit, the record does not establish its national importance.

The Petitioner stated his proposed endeavor in the United States was to "deliver comprehensive strategy, marketing, sales and management solutions to US business" related to the duty-free and travel retail sectors in Latin America. The Petitioner indicated that he would use his specialized and valuable experience and his "extensive network of contacts" in this industry to provide consulting services to assist U.S. companies in capitalizing on the "immense, yet diverse and complex, market potential within Latin America." The Petitioner asserted he would provide new processes and strategies to increase the "export of U.S. goods, particularly tobacco, liquor, electronics, and luxury items such as perfumery and accessories." The Petitioner explained that his proposed endeavor would stimulate the American economy and job market and strengthen U.S. corporate positions in Latin America allowing the nation to remain ahead of competitors in the region.

In addition, the Petitioner submitted a job offer letter from his current foreign employer indicating that they planned to employ him in the United States as its "North America District Manager" based on "his extensive experience and market expertise in duty-free and travel retail." The job offer letter reflected that he would be tasked with supervising retail staff and liaising with senior management, ensuring that projected sales and revenues are met, and cultivating a strong team of branch managers.

The Director later issued a request for evidence (RFE) stating that the submitted evidence did not demonstrate the benefits the Petitioner's proposed endeavor would have on the regional or national economy rising to the level of substantial economic effects as contemplated by *Dhanasar*. As such,

[1] *See 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 Director asked for additional evidence to establish the potential prospective national impact of the Petitioner's proposed endeavor.

In response, the Petitioner stated he intended to incorporate a consulting company in California focused on meeting the needs of U.S. duty free retail companies to help them expand their businesses, including providing specialized business consulting, international expansion strategies, logistics and supply chain management, international sales and marketing strategies, customs and regulatory compliance advice, technology and e-commerce solutions, and training and education programs. The Petitioner asserted that these programs would "undoubtedly solve the need that duty free retailers have to meet the challenges of international expansion." The Petitioner emphasized his specialized knowledge in this sector, asserting that his consulting services would "address current trends in the duty-free market, such as the growth in international tourism, increasing demand for luxury products in emerging markets, and the need for technological innovations in the retail experience." The Petitioner contended his proposed endeavor would enhance U.S. competitiveness, stimulate job growth, promote U.S. products globally, position the United States as a leader in retail technology and e-commerce, and ensure U.S. companies comply with international trade regulations. The Petitioner further stated that his consulting company would create jobs, including six initially and up to 18 employees, amounting to approximated $1.3 million in payroll within five years.

In denying the petition and concluding the Petitioner did not demonstrate the national importance of his proposed endeavor, the Director determined that while his business plans reflected the intent to provide services to clients, these plans did not establish the potential prospective national impact of his proposed endeavor beyond his business, and its employees and clients. On appeal, the Petitioner states that the Director's analysis was overly restrictive and asserts its business projections demonstrate significant economic potential beyond local impact "with clear economic multiplication effects, including job creation, tax revenue generation, and potential industry innovation." The Petitioner points to an asserted wage tax contribution it states will rise to over $154,000 annually by its fifth year of operation representing not "insignificant local transactions but substantive economic inputs with broader systematic implications." The Petitioner contends the Director improperly required that the Petitioner demonstrate economic benefits to economically depressed areas, stating that its business model would lead to industry process innovation, systematic job creation, technology-driven service delivery improvements, and economic ecosystem development potential.

In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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.

First, the Petitioner submitted conflicting proposed endeavors leaving uncertainty as to the potential prospective national impact of his asserted consulting company. In support of the petition, the Petitioner appeared to indicate his intent to provide consulting services, but also submitted a job offer from his current foreign employer reflecting that he intended to work as a "North America District

Manager" supervising retail staff in the United States. However, later in response to the RFE, the Petitioner submitted business plans to develop a consulting business in the duty-free retail sector he asserted would hire up to 18 employees within its first five years of operation. The conflicting assertions and evidence with respect to his proposed endeavor leave question as to whether the Petitioner will open and operate a consulting company as claimed, thereby leaving substantial question as to its potential prospective national impact. The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Petitioner further emphasized many times on the record his "specialized knowledge" and "highly valuable experience" in the duty-free retail sector. While we recognize that the Petitioner gained experience while employed abroad, a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of a specific proposed endeavor.

The Petitioner also asserted a confusing array of generic business plans leaving substantial ambiguity as to the potential prospective impact of his proposed endeavor on a national level. For instance, the Petitioner stated his consulting company would provide a wide array of professional services in differing specialties, including international expansion, logistics and supply chain, international sales and marketing, customs and regulatory compliance, technology and e-commerce, and training and education. The Petitioner asserted that these programs would "undoubtedly solve the need that duty free retailers have to meet the challenges of international expansion." However, in each case, the Petitioner submitted little detail and documentation to support the specific international expansion plans his company would implement, how it would advise companies on logistics, supply chain, and regulatory matters, or what technology or e-commerce innovations it would introduce. Likewise, the Petitioner asserted his proposed endeavor would increase the export of U.S. goods, including tobacco, liquor, electronics, and luxury items such as perfume and accessories. However, given the vague nature of the Petitioner's business plans, there is little support to conclude that his proposed consulting company would have a national level impact on the export these products, each which are individually large industries.

To further illustrate, on appeal, the Petitioner asserts that his proposed endeavor would lead to industry process innovation, technology-driven service delivery improvements, and economic ecosystem development potential. In each case, the Petitioner submitted few specifics on the nature of these process innovations, service delivery improvements, and "economic ecosystem developments." Further, the Petitioner discussed utilizing his "extensive contacts" in Latin America, but there is no specific discussion of these contacts and how they would potentially benefit U.S. companies on a national level. The Petitioner's proposed endeavor is focused on a varying range of fields and professional services, leaving question as to whether any would have a national impact, particularly since he provides little detail as to what specific solutions he would provide to U.S. companies. In sum, the Petitioner did not present sufficiently clear and credible business plans to support that his proposed endeavor would have a potential prospective national impact in a duty-free retail industry he claims generates over $40 billion in revenue annually. The Petitioner does not sufficiently detail and document how his work in the consulting field would be materially different from any other similar

experienced employee working this field, leaving doubt as to likelihood of its prospective national impact.

The Petitioner also contended that his proposed endeavor would enhance U.S. competitiveness, promote U.S. products globally, position the United States as a leader in retail technology and e-commerce, and ensure U.S. companies comply with international trade regulations. Again, the Petitioner's assertions are based in an ambiguous array of services and industries and potential economic impacts making in uncertain that the operations of the asserted consulting company would substantially impact so many aspects of the U.S. economy, including our nation's international economic competitiveness. The Petitioner provided insufficient explanation and supporting documentation to substantiate how his proposed endeavor would have such a broad-based national impact on so many aspects of U.S. economy. Generalized conclusory statements that do not identify a specific impact to the field have little probative value. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

Further, the record does not establish that the Petitioner's endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 890. Although the Petitioner submitted non-specific and unsupported business plans asserting the business would hire 18 employees after the first five years of operation, it did not properly substantiate how this would have a national level impact on an industry he states accounts for over $40 billion annually. The Petitioner did not submit specific and targeted business plans but provides generic assertions about impacting numerous aspects of the economy, each which could be reasonably deemed separate, large, industries or aspects of the economy. The Petitioner also points to an asserted tax contribution it states will rise to over $154,000 by its fifth year of operation; however, it is not clear how this increase in tax revenue, even if sufficiently supported, would represent a meaningful national level impact. Although any basic economic activity resulting from the Petitioner's work has the potential to positively impact a local economy, he has not provided sufficient explanation of the prospective national impact directly attributable to his proposed work, or established how his endeavor would impact an economically depressed area. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.