U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37615373

Date: APR. 10, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a barber and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 Petitioner had not established eligibility for the underlying EB-2 immigrant classification and 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 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.

I. LAW

To qualify for the underlying EB-2 visa classification, petitioners must establish they are advanced degree professionals or individuals of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. See generally 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

If petitioners establish eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. 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,[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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

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

II. ANALYSIS

A. Relevant Background and Reserving Issues

The Petitioner, a barber and entrepreneur, is a citizen of Brazil who entered the United States on a visitor's visa in 2018. In October 2023, he filed his petition claiming eligibility for the underlying EB-2 visa classification as an individual of exceptional ability. According to his business plan, he intends to start a barber shop and barber training center in [redacted] Florida, with additional locations to come in [redacted] Florida and [redacted] Georgia. His businesses' services will include catering to individuals with special needs and other related disabilities.

After reviewing the record, the Director issued a Request for Evidence (RFE), explaining in relevant part that the Petitioner had not satisfied any of the six categories of evidence under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). The Petitioner responded to the RFE, and the Director concluded the Petitioner satisfied at least three of six categories of evidence, without identifying which of the categories were met, to satisfy the first step of the exceptional ability analysis. The Director then determined, without a final merits analysis, that the evidence in its totality did not show the Petitioner is recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States, and had thereby established his eligibility for the underlying EB-2 visa classification. The Director further concluded that the Petitioner had not established any of the three required Dhanasar prongs to demonstrate he merits a discretionary waiver of the job offer requirement in the national interest.

Based on our de novo review, we agree with the Director that the Petitioner has not established the national importance of his proposed endeavor. As this issue is dispositive of the appeal, we reserve the Petitioner's arguments regarding his eligibility for the underlying EB-2 visa classification and whether he meets the remaining Dhanasar prongs to demonstrate he merits a discretionary waiver of

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

the job offer requirement in the national interest. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

B. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. Matter of Dhanasar, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. Id. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id. We 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.

On appeal, the Petitioner submits a brief and generally asserts that the Director imposed a stricter standard of proof than preponderance of the evidence and erroneously applied the law. The Petitioner does not provide examples or details to support these assertions. Based on our de novo review, we agree with the Petitioner that the underlying record supports the substantial merit of his proposed endeavor. The Petitioner's business plan and articles demonstrate that his endeavor falls within one or more of the areas contemplated by Dhanasar and we withdraw the Director's decision to the contrary. However, we conclude the Director properly determined that the Petitioner had not established by a preponderance of the evidence the national importance of his proposed endeavor.

The Petitioner contends the Director did not give due regard to his resume, evidence of his work in the field, and letters of recommendation. However, these documents describe the Petitioner's knowledge, skills, and abilities, which relate to the second prong of the Dhanasar framework and shifts the focus from the proposed endeavor to the foreign national. Id. In our analysis of prong one, our focus is on the specific endeavor that the individual proposes to undertake. Id. at 889. The referenced evidence does not address the Petitioner's proposed endeavor nor explain how it is nationally important.

The Petitioner also claims the Director did not properly analyze the submitted industry reports and articles which demonstrate his proposed endeavor will address "the steep shortage" of professionals in the field. The Petitioner's documents include information about barbers, an industry report, and an article on how barbers can help reduce mental health stigma. The documents make no reference to his specific proposed endeavor. Further, the documents do not support a steep shortage of barbers, and even if it had, the alleged shortage of occupations or occupational skills does not render a proposed endeavor nationally important under the Dhanasar framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner also asserts the Director did not fully consider his business plan which details, for example, revenue projections; steps for expanding operations; establishing a scalable business model

with plans to expand to other economically distressed HUBZones;[3] the inclusion of tailored services for clients with disabilities; and a training program to educate other barbers. However, the Director addressed many of the assertions raised again on appeal. With respect to the Petitioner's projections, including those for revenue, employment, and expansion, he did not provide the basis for them in the business plan or in the remaining record, nor did he establish the import of such data and how, for example, his proposed endeavor would employ a significant population of workers in the area or would substantially impact job creation and economic growth, either to the [redacted] Florida region or the U.S. economy more broadly. We therefore agree with the Director that the Petitioner did not establish his projections would reach the level of "substantial positive economic effects" as contemplated by Dhanasar. Id. at 890.

In addition, we acknowledge the Petitioner's assertions that his proposed endeavor will offer sensory-friendly barbering services tailored for underserved populations, which aligns with national priorities. But, merely aligning with government initiatives is insufficient to establish the national importance of the proposed endeavor. See id. at 889 (explaining that in determining national importance, we do not focus on the importance of the field, industry, or profession in which the individual will work but on "the specific endeavor that the foreign national proposes to undertake"). Further, we acknowledge the Dhanasar decision contemplates that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. at 893. Here, the Petitioner has not established the extent to which his proposed endeavor's methods or strategies improve upon those already available and in use in the United States such that his proposed endeavor would have national or global implications within his field or for the United States. And, as the Director properly determined, while the Petitioner's plan describes the scope of the products or services he intends to provide or perform, it does not sufficiently show how they extend beyond the persons or entities using them. Moreover, the Director addressed the Petitioner's teaching activities, explaining that, in Dhanasar, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact the field more broadly. Id. at 893. Consequently, the record does not demonstrate that, beyond the limited benefits provided to his prospective clients, the proposed endeavor has broader implications rising to the level of having national importance.

[3] The HUBZone program is implemented by the U.S. Small Business Administration (SBA) and encourages economic development in historically underutilized business zones. HUBZone program, U.S. Small Business Administration, https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program#id-hubzone-program-qualifications. The Petitioner submits documents evidencing the areas he intends to open his businesses are qualified HUBZone areas. However, the Petitioner does not address whether he would be eligible to participate in the program. The SBA provides specific program qualifications for the HUBZone program, including that the business be at least 51% owned and controlled by U.S. citizens, a Community Development Corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. Id.

III. CONCLUSION

The Petitioner has not established the national importance of his proposed endeavor, a requirement to establishing *Dhanasar's* first prong. As a result, the Petitioner has not demonstrated that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

ORDER: The appeal is dismissed.