U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30647821

Date: APR. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established eligibility for 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.

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, petitioners must 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. In addition, petitioners must show the merit of 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if:

- 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 job offer requirement would benefit the United States.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. In Part 6 (Basic Information About the Proposed Employment) of Form I-140, Immigrant Petition for Alien Workers, the Petitioner listed the job title as "GENERAL OPERATIONS MANAGER" and provided the nontechnical job description as "PLAN SECTOR ORGANIZATIONS, OVERSEEING MULTIPLE DEPARTMENTS OR LOCATIONS. DUTIES AND RESPONSIBILITIES INCLUDE FORMULATING POLICIES, MANAGING DAILY OPERATIONS." In the request for evidence (RFE), the Director indicated that the Petitioner's initial cover letter claimed the proposed endeavor is "to continue using my expertise and knowledge in mechanical engineering to advance my proposed endeavor as a general and operations manager/entrepreneur in the United States."

In response to the Director's RFE, the Petitioner provided a business plan for E-E-, LLC, a "heavy equipment rental services firm that provides scaffolding and shoring rental services, power generators and water pumps rental services, concrete equipment rental services, electrical tools rental services and landscaping and cleaning tools rental services planned to be headquartered in Florida with two business units in Texas and Georgia." On appeal, the Petitioner maintains that he "intends to establish [E-E-, LLC] a heavy equipment rental services firm offering a range of essential services, including scaffolding and shoring rental, power generators and water pumps rental, CGI concrete equipment rental, electrical tools rental, and landscaping and cleaning tools rental."

The Petitioner did not initially indicate any intention to own and operate a business. In fact, the Petitioner's business plan and supporting tax and business evidence are dated after the Director's issuance of the RFE. Furthermore, the Petitioner initially submitted an "Analysis and Advisory Evaluation" from A-A- who opined on the Petitioner's eligibility for a national interest waiver; however, the letter makes no mention of the Petitioner's owning and operating a business. The Petitioner must establish all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of opening, owning, and operating his own business.

As it relates to substantial merit, 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. The record contains sufficient evidence of the substantial merit of his initial proposed endeavor.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner provided "Industry Reports and Articles" on a wide range of topics, such as occupational information for general and operations managers and economic contributions of immigrant entrepreneurs, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing

his particular general and operations manager services.[2] In *Dhanasar*, 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.

Further, as indicated above, the Petitioner presented a letter from A-A- who found the Petitioner's initial proposed endeavor has national importance. However, the letter discusses the importance of general and operations managers rather than focusing on the national importance of the Petitioner's specific, proposed endeavor. In addition, the letter does not explain how the Petitioner's particular services would have broader implications for our country. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how his services largely influences the field and rises to the level of national importance. In *Dhanasar*, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. The record does not show through supporting documentation how his endeavor sufficiently extends beyond his prospective employer or clients, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not show how his general and operations manager services have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to his particular future work, the record does not show any benefits to the U.S. regional or national economy resulting from his services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[3]

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

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[2] The Petitioner's arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national importance part.

[3] *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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).