U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30649335

Date: APR. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and vocational counselor, 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 that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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).

If 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 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

A. EB-2 Classification

The Director concluded that the Petitioner is qualified for EB-2 classification as a professional with an advanced degree. The record contains evidence that the Petitioner obtained the degree "Licentiate in Psychology" in 2014 from [redacted] in [redacted] Bolivia along with an academic evaluation stating this degree is equivalent to a U.S. bachelor's degree in psychology. In addition, the Petitioner submitted letters showing over five years of progressive experience. We conclude that the record shows by a preponderance of the evidence, the Petitioner qualifies for the underlying EB-2 classification as a professional with an advanced degree.

B. National Interest Waiver

1. Substantial Merit

The first 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. The Petitioner asserts his proposed endeavor is, "[t]o bring my unique understanding of the relationship between mental health and occupation to address and prevent mental health issues and provide vocational coaching and counseling to American youth and young adults." The record contains articles on youth unemployment and mental health, along with evidence of the Biden-Harris Administration prioritizing mental health and equity. We conclude that the proposed endeavor has substantial merit.

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Petitioner asserts that the Director's decision, "[c]ontains instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion." Upon de novo review, we conclude that the Director properly analyzed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence and the Petitioner did not demonstrate that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

[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 is discretionary in nature).

The Petitioner contends his endeavor will impact small businesses to benefit the overall economy and social welfare. He states his proposed endeavor will provide the tools necessary for individuals to enter the workforce in a sustainable and healthy manner and specifically points to the evidence submitted with the request for evidence response "exhibits 1&2." The first highlighted exhibit is the "Proposed Endeavor Statement." This document states that the proposed endeavor's impact on employers and organizations is:

> [A]dding psychology-based coaching before someone joins their workforce…allows them to lower turnover and spend the resources assigned to training and development in individuals that will still remain with the company…be able to retain the best talent…lower recruiting and staffing needs…all key aspects to run a successful operation, and reducing the associated costs.

The Petitioner will do this through helping individuals with his one-on one and family vocational counseling sessions. The Petitioner also contends that his endeavor will reach 15,000 people in the first year of operation. The business plan states that these figures are calculated using examples and industry figures, but there is no information on how the Petitioner's proposed endeavor itself will reach these numbers.

Dhanasar determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Dhanasar* 26 I&N Dec at 893. Similarly, although there may be some indirect impact from his work, the record does not contain any evidence of a broader impact outside of the direct clients the Petitioner will serve. In addition, the record does not show that the Petitioner's proposed endeavor will have "national or even global implications within a particular field" as *Dhanasar* requires. *Id.* at 889. The proposed endeavor's direct impact is limited to the clients it will serve.

The next evidence the Petitioner highlights are the industry articles and reports in the record regarding mental health and equity being priorities for the Biden-Harris Administration. In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* We recognize the value and importance of the industry; however, working in an important field is insufficient to establish the national importance of the proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of his proposed endeavor. Although this evidence provides good background information on the industry itself, without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

The record contains a business plan that shows the Petitioner's intentions for the proposed endeavor. This includes that the company will be 80% non-profit with the other 20% being used to repay the initial investment from the Petitioner's own investment, outside grants and funding, as well as possibly requesting loans. The proposed endeavor seeks to hire 10 employees in the first year and expand the business to 3 new locations and 50% more personnel in the second year. *Dhanasar* states that a proposed endeavor may meet the threshold of national importance by having, "significant potential to

employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar* at 890. The Petitioner has not shown his business operations or staffing levels are substantial enough to establish significant potential to employ U.S. workers or that it will otherwise offer substantial positive economic effects and therefore rise to the level of national importance. The evidence in the record does not demonstrate that the proposed endeavor will provide substantial economic benefits to an economically depressed area, or the region or the U.S. economy more broadly at a level commensurate with national importance.

The record also contains other documentation more applicable to *Dhanasar's* second and third prong analysis including letters of recommendation, proof of awards he has earned, proof of continuing education and events he has participated in, and letters of interest. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because 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 *Dhanasar* framework. *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 alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.