U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30627289

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 in business consulting, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional 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's proposed endeavor is of national importance, that the Petitioner is well positioned to advance the proposed endeavor, and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. 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.

"Advanced degree" means any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *Id.*

"Profession" means one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32),[1] as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

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, 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,[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.

Id.

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factors considered must, taken together, establish that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. *Id.* at 890-91.

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[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

[2] *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).

II. ANALYSIS

The Petitioner proposed to open and operate his company, [redacted] in [redacted] Florida, that will provide financial management, tax, and internationalization consultancy and advisory services to small and medium-sized companies, which are interested in internationalizing their activities and brands in the United States.

As indicated above, the 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. The Director determined that the Petitioner is eligible for the EB-2 classification as a member of the professions holding an advanced degree, and we agree. The remaining issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of that classification's job offer requirement. We conclude that he is not. While we may not address each piece of evidence individually, we have reviewed and considered each one.

The Director determined the Petitioner has established that his proposed endeavor to start a business and work as a business and tax consultant has substantial merit. But the Director determined that the Petitioner has not established that his proposed endeavor is of national importance, that he is well positioned to advance the proposed endeavor, and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification.

On appeal, the Petitioner contends that his proposed endeavor is of national importance, that he is qualified and eligible to undertake a business in the American market, and that his proposed endeavor will provide significant benefits to the United States. To support this claim, the Petitioner presents his employment authorization card, which was issued in 2023, [redacted] employment identification number issued by the Internal Revenue Service (IRS), details on [redacted] which shows that this company was established in Florida in 2023, and a training certificate, which shows his completion of a consultant training workshop in 2023.

The Petitioner claims that he has made efforts to build his venture in the United States by obtaining his employment authorization card and complying with fiscal and tax obligations by establishing a company in Florida and obtaining employment identification number of the company from the IRS. The Petitioner further claims that the support letter from several entrepreneurs show their interests in establishing business partnerships with his company, [redacted] and in referring his venture to their investor clients to carry out internationalization of Brazilian companies in the United States.

The Petitioner's establishing a company, obtaining employment identification number of the company, and completion of a training workshop, and support letters from the entrepreneurs who expressed an interest in establishing business partnerships with the Petitioner's company or referring the Petitioner's venture to their clients may support that the Petitioner is well positioned to advance the proposed endeavor under the second prong of the *Dhanasar* framework. However, they do not address the national importance of his proposed endeavor or how his planned business activities would have broader implications rising to the level of national importance.

The Petitioner asserts that his business will generate quality job openings in the American market because while he will serve as the general and operations manager of the company, his company will

hire market research analysts, marketing specialists, regulatory affairs specialists, accountants, auditors, legal assistants, secretaries, and administrative assistants. In addition, the Petitioner claims that client companies will increase their operational efficiency and enter a new market with information, strategic guidance, and local and international expertise. The Petitioner further claims that the expansion of these companies will result in the creation of new jobs in the United States and will contribute to the greater economic stability. The Petitioner also asserts that by helping Brazilian entrepreneurs expand their businesses in the United States, he will contribute to the increase in foreign direct investment in the country and this will result in an increase in economic activities, job creation, tax revenue for the government, and the growth of local companies, which will provide services and supplies to these foreign companies.

In *Dhanasar*, we stated that an endeavor that has a 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. *See Dhanasar*, 26 I&N Dec. at 890. While we acknowledge the Petitioner's claims, he has not provided sufficient evidence to substantiate them. He has not offered sufficient information and evidence to support that his company would employ a significant population of workers in an economically depressed area or that his endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. The Petitioner has not established the claimed fact with unsupported testimonial evidence alone. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (stating that simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings).

The Petitioner also claims that his venture is part of the service sector and by providing high-quality services and expert advice, he will contribute to the expansion of the service sector, which is vital to the country's economic growth. In *Dhanasar*, we indicated that we look for broader implications of the proposed endeavor and that an undertaking may have national importance, for example, because it has national or even global implications within a particular field. *See Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner has not provided sufficient evidence to substantiate his claims. The Petitioner has not shown how his proposed endeavor to open and operate a company, which will provide financial management, tax, and internationalization consultancy and advisory services, would make a significant impact on the service sector more broadly rather than benefiting his company's clients. The Petitioner has not otherwise provided sufficient information and evidence to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance. Without sufficient documentary evidence of its broader impact, the Petitioner's proposed work does not meet the national importance element of the first prong of the *Dhanasar* framework.

Moreover, the Petitioner asserts that his company will offer training in financial and tax management to entrepreneurs to help them operate more effectively in the United States. However, the record does not show that this undertaking has broader implications in his field, as opposed to being limited to those who participate in the company's training courses. While the Petitioner's plan to provide training in financial and tax management has merit, the record does not sufficiently demonstrate that his company's teaching or instructional activities offer benefits that extend beyond the company's students or trainees to impact the field of business more broadly. Likewise, in *Dhanasar*, we 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. *See id.* at 893.

Because the documentation in the record does not sufficiently demonstrate the national importance of his proposed endeavor required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not established eligibility for a national interest waiver. Therefore, further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, would serve no meaningful purpose, and we will reserve these issues for future consideration should the need arise.[3]

III. CONCLUSION

The Petitioner has not established by a preponderance of the evidence that, as a matter of discretion, he is eligible for or otherwise merits a national interest waiver because he has not shown that his proposed endeavor is of national importance.

ORDER: The appeal is dismissed.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 alternate issues on appeal where an applicant is otherwise ineligible).