U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30631587

Date: APR. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 EB-2 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 qualified for classification as a member of the professions holding an advanced degree, but that he had not established 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.

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. 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner initially indicated that he intends "to serve as CEO/entrepreneur by managing and operating my own company, focused on the development and management of a digital learning and instruction platform. It will be a Florida-based business/platform that will specialize in providing courses for sales people operating in the pharmaceuticals industry." He further explained: "These courses will be specifically aimed at expanding pharmaceutical sales professionals' knowledge in ophthalmology-related pharmaceutical products and the most effective ways to sell them. They will be provided in a classroom setting as well as online."

In response to the Director's request for evidence, the Petitioner stated:

> I intend to continue my career as chief executive/entrepreneur in the United States. I will do this by creating my own company in the field, called [redacted] Working with U.S. trade companies, I will use my practical and theoretical experience in the field to coach sales teams and develop commercial chains for American products, equipment, and services thus ensuring my company delivers consistent results – making it stand out in the market, benefiting the national economy, as well as generating jobs for U.S. workers.
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> In a nutshell, my company will offer training and support to sales services – especially for U.S.-based international trade companies. I will maximize my clients' profits and reduce their operational costs while helping them to reach international markets generating revenues to U.S. economy.
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> . . . .
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> Therefore, my overall proposed endeavor in the United States is to launch and develop my U.S. company, via which I will assist American companies to improve, restructure or refine their existing sales processes and reach international markets. Through this, I will both incentivize the national economy, as well as create jobs for American workers.

In addition, the Petitioner submitted the business plan for his company. This business plan includes industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company will 12 personnel in year one, 20 in year two, 22 in year three, 26 in in year

four, and 28 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while his plan offers revenue projections of $442,000 in year one, $758,100 in year two, $858,005 in year three, $1,060,905 in year four, and $1,193,951 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

The record includes information about federal and state programs for immigrant business owners in the United States, workforce issues and sustainability, our country's loss of immigrant entrepreneurs to other nations, the reasons the U.S. business community should support immigration reform, the increase in the U.S. foreign born population, entrepreneurship trends, and the advantages of starting a business in the United States. In addition, the Petitioner provided articles discussing the benefits of an entrepreneurial revolution, billion-dollar startups founded by U.S. immigrants, small business and entrepreneurship, the financial planning industry, the management consulting industry, immigrants as business starters, the entrepreneurship landscape, entrepreneurship as an engine of economic development, and CEO leadership in digital transformation. He also submitted information about the job outlook for chief and top executives, the barriers facing immigrant entrepreneurs, immigrants as job creators, characteristics of immigrant entrepreneurs, immigrants as driver's of U.S. economic growth, chief financial officer (CFO) predictions and initiatives, the U.S. labor shortage, the positive economic impact of immigration, the "International Entrepreneur Rule," immigrants and workforce development, CFO concerns over revenue and earnings growth, and trends facing CFOs (including talent retention and remote work).

We agree with the Petitioner that the submitted documentation establishes his endeavor has substantial merit. In determining national importance, however, the relevant question is not the overall importance of the industry in which the individual will work or the value of immigrant entrepreneurship; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor.

The Petitioner offered letters of support from H-F-, R-P-R-, R-T-, R-A-, F-C-, and M-N-T- discussing his business capabilities and pharmaceutical sales experience. The Petitioner's skills, knowledge, and prior work in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

The Petitioner also provided an "Expert Opinion Letter" from Dr. V-L-, Associate Professor of Marketing at [redacted] in support of his national interest waiver. Dr. V-L- contends that the Petitioner's proposed work is of national importance because his generic occupation of CEO/entrepreneur and knowledge in business administration stand to "contribute to the nation's economy by optimizing U.S. companies' resources, increasing productivity, reducing costs, and generating revenue." Again, the issue here is not the national importance of the field, industry, or profession in which the individual will work; rather we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The advisory opinion does not demonstrate how the Petitioner's day-to-day management of his company's operations and performance of sales training and consulting services for clients as contemplated by his proposed endeavor rise to a level of national

importance. The letter from Dr. V-L- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in his industry or substantial positive economic effects for our nation that are indicative of its national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not demonstrated his undertaking offers "national or even global implications within a particular field or industry." The Director also concluded the Petitioner had not shown that the "benefits to the regional or national economy resulting from his proposed endeavor would reach the level of 'substantial positive economic effects.'"

In his appeal brief, the Petitioner argues that he "will be addressing an industry shortage, which cannot be addressed by the U.S. workers as demand exceeds supply." We are not persuaded by the argument that the Petitioner's proposed endeavor has national importance due to the shortage of workers in his field. Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner asserts that his "vision of establishing a digital learning platform for pharmaceutical sales professionals has the potential to make a considerable impact." While the Petitioner claims that this platform "directly contributes to the industry's improvement by fostering a more informed and skilled sales force," the record does not demonstrate that it stands to impact his field or industry more broadly beyond the clientele enrolled in his company's sales training programs.[2]

The Petitioner further contends that his "company will have a great impact on the U.S. economy generating a total of 28 direct jobs in Year 5." He argues that his proposed endeavor stands to affect the national economy by "offering economic convenience and agility" to "small and medium-sized U.S. companies," "promoting growth and expansion and driving change with innovation," "stimulating the domestic job market," and generating "new jobs for American workers." The Petitioner, however, has not provided evidence demonstrating that his proposed business activities would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of his proposed endeavor stands to offer broader implications in his industry or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States.

The Petitioner also cites to information from public policy organizations, news media, and U.S. federal agencies to show the overall value of immigrant entrepreneurship, but he has not demonstrated how operating a sales training and support services company as contemplated by his specific proposed endeavor rises to a level of national importance. In *Dhanasar*, we noted that "we look for broader

[2] 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. *Id.* at 893.

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.

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. While the Petitioner's statements reflect his intention to provide sales training and support services to his company's future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. 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. *Id.* at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field, the pharmaceutical industry, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his endeavor stands to generate jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers Florida or the United States a substantial economic benefit through employment levels or business activity.

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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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 alternative issues on appeal where an applicant is otherwise ineligible).

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. 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.