U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30635675

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, 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 although the Petitioner qualified as an advanced degree professional, he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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.

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 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.

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[1] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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).

[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 to be discretionary in nature).

The Petitioner proposes to create a corporate event production consultancy company "specializing in innovative, creative and technological solutions to turn ideas into events that move the American market in the [redacted] region" in Florida. The Petitioner further states that the "services of the enterprise include the areas of consulting, production, fundraising, infrastructure and promotion and sales so that [business-to-business] customers can achieve positive and quality results" and the "aim of the venture is to create connection from the 'inside out,' cultivating lasting relationships with our business partners."

The first prong of the *Dhanasar* framework, 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. *Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner's proposed endeavor is of substantial merit, and we agree. Turning to the national importance of his endeavor, the Director concluded that the Petitioner did not establish that his proposed endeavor has national importance.

On appeal, the Petitioner relies, in part, on an August 2023 letter of intent to invest. However, as the Petitioner must establish eligibility at the time of filing, we will not consider the letter here.[3] 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Petitioner's work. The relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. We further indicated 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.

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 the United States. Specifically, the Petitioner 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 plans to hire 12 employees, generate direct and indirect jobs, and has the potential to employ U.S. workers and will bring substantial positive economic effects, particularly in economically depressed areas, 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 create substantial benefits to the U.S. economy, he has not offered sufficient evidence that the area where his company plans to operate in Florida will be an area

[3] The Petitioner filed the petition on November 28, 2022.

that is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, tax revenue, or business activity. While any basic economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the economic activity of his proposed endeavor would rise to the level of national importance.

We also acknowledge the Petitioner's statements regarding the consulting industry. But the industry's importance overall is not sufficient to establish the national importance of the endeavor proposed here. As previously mentioned, when 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 "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

While the Petitioner's statements reflect his intention to own and operate a corporate event production consultancy company, the Petitioner 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 similarly conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clients to impact the industry more broadly at a level commensurate with national importance. Nor has he documented that the particular work he proposes to undertake offers original innovations that contribute to advancements in corporate event production consulting or otherwise has broader implications for his field. For all these reasons, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the remaining prongs, and we hereby reserve them.[4] The burden of proof is on the Petitioner to establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[4] *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).