U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30211004

Date: APR. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of athletics and a soccer coach, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 the EB-2 visa classification or 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.

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 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

- 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 Petitioner asserts on appeal that the Director erroneously determined that he does not qualify for the EB-2 classification as an individual of exceptional ability. However, as the record does not establish by a preponderance of the evidence that the Petitioner is eligible for a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.[2]

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. *Id.* at 889. The Petitioner's proposed endeavor is to develop a sports academy in the state of Florida specializing in soccer. The record includes information on the Petitioner's proposed endeavor along with articles on the importance of athletic coaching, entrepreneurship to the global economy, the role immigrants play in entrepreneurship, and their success in business ownership. 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. *Dhanasar* 26 I&N Dec. at 889. The Petitioner contends on appeal that the Director did not apply the proper standard of proof, instead imposing a stricter standard, and erroneously applying the law. He asserts the Director did not give "due regard" to the evidence, specifically: the resume outlining his experience; the business plan and statement describing his credentials, expertise, and accomplishments; evidence of his work in the field; letters of recommendation; and the industry reports and articles in the record. 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.

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in nature).

[2] *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 an applicant is otherwise ineligible).

The Petitioner states that his proposed endeavor will create 13 direct jobs by the end of the fifth year of operation and will pay a total of one million dollars in salary in those five years. However, the business plan calculated these numbers by using full-time employment, while also stating that the nature of the business may not merit full-time staff. *Dhanasar* states the proposed endeavor may show national importance by having a "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar* 26 I&N Dec. at 890. The record does not show the nature of these jobs, an accurate representation of the salaries, and the staffing levels themselves are not substantial enough to rise to the level of national importance.

The Petitioner asserts that his proposed endeavor will be established in a HUBZone area that will, "[h]elp to fuel small business growth in historically underutilized business zones" and "[w]ill make a stand and impact, generating jobs for U.S. workers . . . improving the wages and the working conditions for U.S. workers, and helping the local community bring investments to the region." The Petitioner states that his business location will be in [redacted] Florida, in a designated HUBZone area.[3] However, the Petitioner has not offered sufficient evidence that his business will be located in a HUBZone. Further, he did not indicate that his endeavor would participate in the HUBZone program or that it would be eligible to do so. While it appears that the Petitioner may have intended to equate a designated HUBZone with an "economically depressed area," the record does not support a conclusion that this is an equitable comparison. The Petitioner has not otherwise claimed or provided evidence that the area where his company will operate is economically depressed, that it 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, business activity, or related tax revenue. While the intention is meritorious, the Petitioner has not provided corroborating evidence to support these claims. The Petitioner's claims of his proposed endeavor's economic impact have not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide these benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. *Chawathe*, 25 I&N Dec. at 376.

Additionally, the business plan shows the Petitioner intends to expand his business to an additional location in his third year of business. However, 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. *Dhanasar* 26 I&N Dec. at 893. Although the Petitioner states he plans to expand his business by adding an additional soccer academy in his company's third year of operation, the record does not establish the proposed endeavor will benefit more than the direct clients it will serve or that the Petitioner's business would impact the athletics industry more broadly.

On appeal, the Petitioner contends his extensive experience in the athletics industry will benefit any U.S. company and individuals that need qualified professionals who possess expertise in business administration, professional athletics, and soccer coaching. In addition, the Petitioner states the reports and articles in the record show his endeavor's national importance. Past experience is applicable to prong two analysis, on whether the Petitioner is well positioned to advance the endeavor but is not

[3] Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized business zones, with a goal of annually awarding at least 3% of federal contract dollars to HUBZone-certified companies annually. *See* "HUBZone Program," https://www.sba.gov/federal-contracting/contracting-assistanceprograms/hubzone-program.

proof of national importance. In addition, the industry reports and articles on the importance of athletic coaching, the importance of entrepreneurship to the global economy, the role immigrants play in entrepreneurship, and their success in business ownership are helpful for background information and in a substantial merit claim as discussed above, however, they also do not show national importance. It is the importance of the specific endeavor we must analyze and not the industry itself.

Finally, the record contains an expert opinion letter that reiterates many of the same arguments the Petitioner makes that have been addressed above regarding the proposed endeavor, the economic possibilities, and his past experience in the field. 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 Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

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.