U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28786273

Date: APR. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an infrastructure project manager, seeks second preference immigrant classification (EB-2) 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 immigrant 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 the EB-2 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 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. Section 203(b)(2)(B)(i) of the Act.

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 (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 in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Director concluded 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 waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Proposed Endeavor

The Petitioner initially stated that his proposed endeavor is to work as an infrastructure project manager and "collaborate with companies, entities, and organizations in the United States to develop infrastructure projects." The endeavor's specific activities would include supporting companies that develop infrastructure improvements, analyzing and issuing recommendations for project proposals, monitoring each stage of the construction work, and ensuring contractors' compliance with work requirements specified in contracts, etc.

In response to the Director's RFE, the Petitioner submitted revised personal statements addressing his endeavor more in detail and introduced a business plan. The Director determined that the Petitioner's inclusion of a business plan and the following language from his "Proposed Endeavor Statement" materially changed the proposed endeavor:

> My proposed endeavor is to build on my extensive experience and knowledge as a consultant and business administrator in transport infrastructure monitoring, control, and management of administrative processes in associated areas, to develop novel and unique projects set forth in and associated with the Infrastructure Act of the United states, with the ultimate goal of transport modernization for the mutual benefit of the citizenry of the country and national as a whole.

However, we note that the Petitioner initially mentioned his plans for collaborating and consulting with various companies and entities to develop infrastructure projects. His more detailed statement regarding these plans, as well as the business plan, were a response to the Director's request for additional information and thus were not an attempt to change the nature of his endeavor.[2] Therefore, we withdraw this portion of the Director's decision as it relates to the material change of the proposed endeavor and will review the entire record, including the evidence submitted in response to the Director's RFE, to evaluate whether the Petitioner's endeavor is of national importance.

[2] Our decision here is based on the plain reading of the Petitioner's statements on record and is independent of the claims and analysis made by the Petitioner regarding *Matter of Izummi,* 22 I&N Dec. 169 (AAO 1998) in his appeal brief.

B. Substantial Merit and National Importance

Upon de novo review, we agree with the Director's conclusion that the Petitioner demonstrated substantial merit but not national importance of his endeavor under the first prong of *Dhanasar*. On appeal, the Petitioner contends that he submitted "ample evidence" to demonstrate the endeavor's national importance without offering other new evidence. But such "ample evidence" largely consists of industry articles and reports discussing the state of U.S. infrastructure and costs to fix the infrastructure, a rising demand for professions working in the infrastructure industry, and the government's priorities in building a strong infrastructure. Merely working in an important field is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake" and consider the endeavor's "potential prospective impact." *Dhanasar,* 26 I&N Dec. at 889.

Overall, the record lacks specific and persuasive details regarding the proposed endeavor and its impact. In *Dhanasar*, we noted 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.* The Petitioner asserted in his personal statements that he will "develop novel and unique projects set forth in and associated with the Infrastructure Act of the United States" and "provide novel solutions to 21st century problems for implementation by companies in the areas of projects administrative management" to modernize the infrastructure in the United States. But the Petitioner has neither described these "novel" and "unique" projects nor suggested that his solutions or methodologies somehow differ from or improve upon those already available and in use in the United States. The Petitioner has not provided sufficient evidence to demonstrate that his endeavor would have national or global implications within the field. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The record also contains various recommendation letters praising the Petitioner's knowledge, experience, and successful handling of his past projects. However, these letters do not provide details regarding the Petitioner's future endeavor or how it will specifically impact the infrastructure industry or profession. Furthermore, the Petitioner's skills, expertise, abilities, and prior accomplishments relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor he proposes to undertake has national importance under *Dhanasa's* first prong.

In *Dhanasar*, we further noted 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.* In the business plan, the Petitioner claimed that his business, [redacted], will be located in Texas to "help rebuild the America's transportation infrastructure, generate significant direct and indirect employment opportunities and unequivocally impact and benefit a wide range of American communities and citizens." However, the Petitioner did not demonstrate how the business plan's claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the [redacted] region or our nation. Although the business plan projects a revenue increase from $758,800 in year one to $1,945,000 in year five, and a payroll increase from $526,000 in year one to $1,361,807 in year five, it does not

sufficiently demonstrate the basis for its financial projections. The plan also claims that the business would create 16 staff positions by the fifth year, but the record does not demonstrate that such future staffing levels would provide substantial economic benefits more broadly at a level commensurate with national importance.

In addition, the Petitioner asserted that he intends to "work in and serve some of the economically distressed communities" in the greater [redacted] area, but he did not provide persuasive details concerning the impact his business will have on these communities. The Petitioner, for instance, did not show that the projected employment figures would utilize a significant population of workers or would substantially impact job creation and economic growth in the disadvantaged area. The Petitioner offers only generalized statements about the [redacted] area being economically depressed and has not supported his claims of the endeavor's specific impact to the economically disadvantaged areas independent of his business plan. Again, the Petitioner has not supported his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner asserts in the business plan that he "will induce positive spillovers into the U.S. society by helping improve and modernize the critical infrastructure that millions of Americans use on a daily basis, increasing their standard of living, and reducing the gaps between developed and less developed or underprivileged areas in the U.S." We acknowledge that any offer of goods or services has the potential to impact the economy; however, the record does not support the Petitioner's company would operate on such a large scale that would benefit the U.S. economy rising to the level of national importance. Aside from generalized claims and statements, the Petitioner has not established that, beyond the limited benefits provided to its prospective clients and employees, his proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

Based on the foregoing, we conclude that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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 find that he has not established eligibility for 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.