U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30591529

Date: APR. 30, 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. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding the record did not establish that the Petitioner qualified for a national interest waiver. 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.

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." *Id.* 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,[1] 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded that the Petitioner qualified as a member of the professions holding an advanced degree. The record supports that conclusion. The remaining issue to be determined on appeal 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.

The Petitioner stated that he intended to operate a company providing fraud and loss prevention services to small- and medium-sized businesses in the United States. The Director concluded that, while the Petitioner's proposed endeavor had substantial merit, he did not demonstrate that his proposed endeavor had national importance. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his endeavor in order to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

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. *Dhanasar*, 26 I&N Dec. at 889.

On appeal, the Petitioner asserts that U.S. Citizenship and Immigration Services (USCIS) "erroneously applied the law," although he does articulate how the Director erred or what in the decision was erroneous.[2] The Petitioner also contends, without further explanation, that the Director applied a stricter standard of proof than that of preponderance of the evidence[3] and "did not give due regard" to the evidence submitted. The Petitioner asserts that the submitted evidence established the national importance of his proposed endeavor.

In 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." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further

[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 to be discretionary in nature).

[2] An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).

[3] *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

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.* 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. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. 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.

The Petitioner provided industry reports, articles, working papers, a strategic plan from the U.S. Department of Justice, and a national security strategy from the White House. This documentation discusses fraud risks to business entities; immigration, entrepreneurship, and the economy; import/export markets between the United States, Canada, and Mexico; and U.S. domestic and foreign policies. While this material provides general information related to the effects of fraud mitigation on the economy, it does not provide insight into the Petitioner's plan to operate a consultancy company specializing in fraud risk and prevention or show how this specific endeavor would have a potential prospective impact of national importance.

The record also includes letters of recommendation from the Petitioner's former work colleagues discussing his experience and emphasizing how his expertise will directly benefit his company's goals. We note that evidence of the Petitioner's job experience and performance generally relates not to the national importance of an endeavor, as discussed in the first prong of *Matter of Dhanasar*, but to the second.[4] As such, the letters do not sufficiently demonstrate the national importance of the Petitioner's proposed endeavor.

The Petitioner's appeal brief describes his proposed endeavor as follows:

> [The Petitioner's] business plan underscores the adverse effects of data breaches on various industries, including healthcare, tourism, retail, and finance. By specializing in fraud prevention and intelligence analysis, the [Petitioner's] company **will play a pivotal role in safeguarding these sectors,** which are fundamental components of the U.S. economy.
>
> Moreover, the [Petitioner's] commitment to supporting small businesses is a crucial aspect of his proposed endeavor. Small businesses are the lifeblood of the U.S. economy, and the [Petitioner's] company aims to provide cost-effective fraud prevention and consultancy services. **By reducing the vulnerability of small and medium-sized business** to **fraud and financial losses,** the [Petitioner's] endeavor directly contributes to job creation and economic growth. [Emphasis in the original.]

The Petitioner's business plan stated the following concerning his business intentions:

[4] Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision.

> The company will provide consultancy services in internal controls, fraud investigation and loss prevention for U.S. corporations. Upon doing so, the company hopes to help others to implement and upgrade their internal safety systems, reducing risk of financial, image, regulatory and tax compliance losses.

While the business plan offers an overview of the services the Petitioner intends to provide, its argument for the asserted national importance of his endeavor relies on the overall importance of fraud risk on a broad scale, such as the practical usage and storage of information at the small-business level and safeguarding sensitive information as a matter of national security. The Petitioner has not provided independent evidence or otherwise explained how his company would have a prospective national impact on the field of fraud risk and prevention or an economy of any scale. For example, the business plan anticipates hiring 77 individuals by the conclusion of its fifth year of operation and generating a net revenue of $678,581. The plan does not, however, provide of the basis of these projections, nor are the numbers corroborated by probative evidence sufficient to demonstrate that it is likely the company will have a positive national economic impact or a national prospective impact within the field. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. Specifically, he has not shown that his business stands to provide substantial economic benefits to any particular locality or to the United States overall. While the business plan explained in general terms that his company's services would benefit the U.S. economy because it would save businesses money through fraud prevention, that reasoning was not based on any objective evidence related to his specific proposed endeavor to operate a consultancy company. As such, the business plan does not demonstrate that the prospective benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

It is not clear how a business of the size and scope described in the business plan would positively impact a given region in which either his employees or clients are located. The Petitioner has not provided evidence to show that he would employ a significant population of workers in a particular region, nor has he shown that his proposed endeavor would offer a region or its population substantial economic benefits through employment levels, business activity, or tax revenue.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, 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 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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.