U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30625646

Date: AUG. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dental surgeon, 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 the record did not establish that the proposed endeavor is nationally important or that it would be beneficial to waive the requirements of a job offer. 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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:

- 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.

Id.

II. ANALYSIS

The Petitioner claimed eligibility for the EB-2 immigrant classification as a member of the professions holding an advanced degree. However, because we conclude that he is not eligible for, and does not merit as a matter of discretion, a national interest waiver, and this determination is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of his eligibility as an advanced degree professional. 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).

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 agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the Dhanasar analytical framework.

A. Substantial Merit and National Importance

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.

The appeal brief states that the Petitioner's business, [redacted] a dental health and wellness firm, will "transform aesthetics in the US and ensure the reinvigoration and wellbeing of countless US workers impacted by the pandemic so they can restore their self-image…while providing essential dental care to communities gripped in the growing critical shortage of dental health professionals." The evidence provided does not demonstrate that this specific endeavor is of national importance.

As a preliminary matter, the Petitioner asserts on appeal that in denying the petition, the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard." An appeal

[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).

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). Although the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not specify, as required, in what way the Director applied this stricter standard.

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 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. 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. 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. 26 I&N Dec. at 893.

The Petitioner argues on appeal that his proposed work is nationally important because it will improve the country's economy and the social welfare of its people. The brief describes the shortage of dental health professionals and the business's aim to make dental care accessible to more individuals. Yet the brief and the record do not explain how the business would impact the overall field more broadly beyond its clients on the level of national importance. The brief describes the demand for health services in the United States and the importance of immigrant entrepreneurs to the U.S. economy. These arguments ignore the requirements we set forth in Dhanasar. It is not the importance of the field that determines an endeavor's national importance, but rather how the specific endeavor will impact the field on a level commensurate with national importance. See Dhanasar, 26 I&N Dec. at 889.

The record does not sufficiently demonstrate national importance either.[2] The Petitioner provided a number of articles about dental health in the United States, oral surgery, and immigrant business ownership.[3] These articles and reports are of little evidentiary value as they do not address the Petitioner's specific proposed endeavor or how it would have broad implications in the dental and wellness field in a way that implicates national importance.[4]

The Petitioner also provided a letter from Dr. [redacted] a dentist and assistant professor in restorative dentistry at [redacted] As a matter of discretion, we may use opinion statements

[2] While we may not discuss every document submitted, we have reviewed and considered each one.

[3] We note that in response to the request for evidence (RFE), the Petitioner submitted additional articles and educational training documentation. However, this evidence originated after the filing of the petition. A petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(l), (12).

[4] The Petitioner also presented letters of recommendations from associates and patients, educational certificates, licenses, and employment verification letters. Nevertheless, the Petitioner does not explain how this evidence is relevant to national importance as it points to the Petitioner's past accomplishments, training, and experiences, not the specific endeavor's potential impact in dental and wellness field. Generally, this type of evidence is more appropriate for the second prong when determining if the petitioner is well-positioned to advance the proposed endeavor. Dhanasar, 26 I&N Dec. at 890.

submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Nonetheless, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. Id. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. Id. Here the advisory opinion is of little probative value as Dr. [redacted] evaluation of national importance focuses on a general discussion of the Brazilian economy and then discusses that U.S. companies doing business in Brazil would benefit from individuals like the Petitioner with experience in Brazilian business. It is unclear how this discussion is relevant to the national importance of the Petitioner's business, which will provide dental and wellness services to individuals in the United States. Overall, the evidence in the record presented neglects to explain how the Petitioner's proposed endeavor impacts the field beyond the company's clients.

Moreover, he has not demonstrated 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. An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have national importance. Dhanasar, 26 I&N Dec. at 890. Here, however, the business plan does not adequately support its projections of job and revenue creation.

The Petitioner's business plan anticipates that the Petitioner's company will reach a total of 40 employees in year five, with payroll expenses reaching $4,143,449 over the company's first five years. He also projected generating $287,409 in net income in year one, increasing to $2,516,668 in year five. Nonetheless, the plan does not explain how these forecasts were calculated, or adequately clarify how these projections will be realized, nor does the record contain evidence to support the business plan's financial projections. The preponderance of the evidence standard requires that the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. Matter of Chawathe, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. See id. Here, the lack of supporting details detracts from the credibility and probative value of the business plan.

Even if we assumed all the projections in the business plan were accurate, the record lacks evidence demonstrating that its impact would be nationally important. The brief submitted with the petition contends that the Petitioner's business will "increase the flow of money in the U.S. on a national level, which will contribute to the U.S. gross domestic product." Yet the Petitioner did not provide documentation to support these statements that the company will result in substantial economic growth on the level of national importance. The record does not illustrate how creating 40 jobs and generating the net income as projected in the business plan, would have substantial positive economic effects on the level of national importance. The Petitioner must support assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. The Petitioner has therefore not provided sufficient information and evidence to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance. Accordingly, the record does not sufficiently demonstrate that the Petitioner's proposed endeavor is of national importance.

In the same way that Dhanasar finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, we find that the record does not establish that the Petitioner's proposed endeavor will sufficiently extend beyond his clients to affect the region or nation more broadly. 26 I&N Dec. at 893. He has not shown that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890.

Accordingly, we find that the record does not demonstrate national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision and the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments[5] concerning eligibility under the Dhanasar framework.[6] Bagamasbad, 429 U.S. at 25 (stating 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. at 526 n.7 (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 he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[5] While we reserve the remaining arguments concerning eligibility, we note that the record lacks any documentation regarding the Petitioner's 2021 arrest for several offenses, including practicing or attempting to practice medicine without a valid medical license and possession of harmful drugs without a prescription. Petitioner should address this matter in any future filing where it may be relevant.

[6] The Director's decision initially states that the Petitioner did establish he is well positioned to undertake the endeavor and that it would not be beneficial to waive the requirements of a job offer, yet later declined to analyze the Petitioner's eligibility under these prongs. We acknowledge this inconsistency, but as our determination on national importance is dispositive of the appeal, we decline to further address the issue in this decision.