U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32461710

Date: AUGUST 1, 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but did not establish 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 qualify for 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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

In his definitive statement, the Petitioner describes his proposed endeavor as developing and expanding his Turkish cotton towel and clothing business, [redacted] a limited liability company located in Florida. The Petitioner states he will serve as the company's founder and chief executive officer. The Petitioner's business plan explains the company will follow a drop shipping business model and operate a direct sales website. The plan states the company is incorporated in Florida and will undergo three stages of expansion to operate nationally.

The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

A. Substantial Merit and National Importance

1. Substantial Merit

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined the Petitioner established the substantial merit of his proposed endeavor. We agree.

2. National Importance

The Director concluded the Petitioner did not establish the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that his proposed endeavor would have substantial positive economic effects or a broader impact on his field.

On appeal, the Petitioner asserts his proposed endeavor has national importance because the articles he submitted show how immigrant entrepreneurs like the Petitioner "play a vital role in the recovery of the U.S. economy and directly contribute to the country's ongoing economic growth." The Petitioner submitted articles on immigrant entrepreneurs, entrepreneurial statistics, 55 percent of America's startups founded by immigrants, immigrants creating jobs, the impact of immigrant entrepreneurship, why America is still the land of opportunity for immigrant entrepreneurs, immigrant

business owners as key to America's economy, how immigration can fix America's labor shortage, the positive economic impact of immigration, why the United States is losing immigrant entrepreneurs to other nations, why businesses should support immigration reform, why supporting "documented dreamers" is a good idea, the Biden era's foreign-born boom, global trends in entrepreneurship, the advantages of starting a business in the United States, entrepreneurship trends for 2022-2023, immigrants and workforce development, and the need for an entrepreneurial revolution.

The Petitioner claims the Director did not give due regard to these articles which he claims demonstrate the national importance of his proposed endeavor. The articles address the importance of entrepreneurship and the contributions of immigrant entrepreneurs to the United States, but they do not address his specific proposed endeavor. Our assessment of national importance does not focus on the importance of issues affecting a field or our nation in general, rather it "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, none of the articles mention the Petitioner or address the potential prospective impact of his proposed endeavor. *See id.* (explaining we consider the proposed endeavor's potential prospective impact when assessing national importance). Consequently, the articles do not establish that his proposed endeavor would extend beyond his company's individual clients to impact these national interests more broadly. *See id.* (explaining "we look for broader implications").

The Petitioner also claims the Director did not give due regard to his business plan. The Petitioner's business plan projects his company will employ 13 people the first year increasing to 83 employees in the fifth year. The plan states the company's distribution center will be located in an economically depressed area and offer half of its positions to youth with low or no experience. The plan states the company's business development offices will also be located in underutilized areas but does not specify how many people those offices will employ. The plan projects the company's net income will be -$8,645 the first year, increasing to $368,307 in the fifth year. The plan states that the retail industry in the United States supports 52 million jobs and generates $3.9 trillion. In light of these industry statistics, the Petitioner has not demonstrated that his company's projected employment and income will have significant potential to employ U.S. workers, even in an economically depressed area, or have other substantial positive economic effects commensurate with national importance. *See id.* at 890 (discussing significant potential to employ United States workers and other substantial positive economic effects as indicative of national importance).

The Petitioner further asserts the Director did not fully consider his recommendation letters and evidence of his work in the field. The Petitioner submitted letters from employers and colleagues who praise his skills and accomplishments. For example, B-O-[2] commended the Petitioner's contributions to [redacted], a television channel in Turkey and describes the Petitioner as "a unique professional that is sought after by many companies in his field." A-M-A- praises the Petitioner's work at [redacted], a television station in Turkey and lauds the Petitioner as "a solver of problems" with "a passion for accomplishing goals with excellence." A-S-O- also attests to the Petitioner's achievements at [redacted] and states he carried the channel "to a next level." O-H-B- describes how his partnership with the Petitioner helped his business and expresses his belief that the Petitioner will be "an asset to the United States." While they attest to his contributions to their companies, B-O-, A-M-A-, A-S-O- and O-H-B- do not discuss the Petitioner's proposed endeavor or any impact it would have in the retail industry.

[2] We use initials to protect the privacy of the referenced individuals.

The Petitioner submitted three additional letters in response to the Director's request for evidence. N-A-H-, A-S-, and R-R-B- express their belief that the Petitioner "will undoubtedly contribute to the prosperity and well-being of the local community while fostering an environment of growth and opportunity." The text of these letters is nearly identical, which detracts from their probative value. The letters also do not specify how the Petitioner's company would extend beyond service to individual customers to impact the retail industry more broadly.

The Petitioner also submitted a letter from V-L-, Associate Professor of Marketing at [redacted] expressing his opinion that the Petitioner qualifies for a national interest waiver. V-L- discusses the importance of entrepreneurship, small businesses, and immigrants to the American economy. He states the Petitioner can "generate great impact in the U.S. companies interested in his services," which "will translate in[to] benefits for the industry and the U.S. economy." V-L- does not specify how the Petitioner's work would extend beyond his company and its customers to impact the retail industry in a manner commensurate with national importance. *Cf. id.* at 892 (stating Dhanasar submitted probative expert letters describing the importance of his specific research as it relates to U.S. strategic interests).

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, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company's clients to impact his field more broadly in a manner indicative of national importance.

C. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of his specific proposed endeavor and he does not meet the first prong of the *Dhanasar* framework. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (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. 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 established the national importance of his proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, he has not demonstrated that he is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.