U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31458883

Date: AUG. 2, 2024

Appeal of Texas Service Center Decision

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

The Petitioner proposes to be an entrepreneur in the logistics field and 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 (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record established that the Petitioner qualified for the underlying visa classification, but he did not merit a discretionary waiver of the job offer requirement in the national interest. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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.

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 USCIS may, as matter of discretion, 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.

USCIS' decision to grant or deny an NIW is discretionary in nature. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts of Appeals, as well as the Third Circuit in an unpublished decision).

II. ANALYSIS

The Petitioner has a background in business in his home country. His proposed endeavor is to use the company he jointly owns with his spouse as a vehicle to provide logistics services to U.S. companies, and to export goods from the United States to Brazil.

A. National Interest Waiver

1. Substantial Merit and National Importance (Collectively *Dhanasar's* First Prong)

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 Director evaluated the Petitioner's business plan and the economic impact analysis he offered for the record noting the forecasted revenue, profits, and employment creation. The Director further discussed an opinion letter that advocated the Petitioner satisfying *Dhanasar's* three prongs. The Director indicated the plan was inadequate because neither he nor the plan indicated how its projections were calculated, which undermines his claims. Stated differently, the business plans predictions were effectively speculation that lacked an objective basis for the projections.

While the Director acknowledged the endeavor would benefit the companies that contract with it, they concluded the record did not establish how the business would have an adequate effect in the field or would result in substantial positive economic effects as contemplated by *Dhanasar*. The Director also found that most of the letters addressed the Petitioner's background, skills, and capabilities, but those aspects were less salient to *Dhanasar's* first prong and more related to prong two. And the opinion letter mostly focused on the national importance of the logistics industry as a whole and not on the national importance of the proposed endeavor. Finally, the Director did not factor any letters of intent into their decision because those were created after the Petitioner filed the petition and therefore did not demonstrate his eligibility on the date he filed it.

The appeal brief does not appear to be responsive to the reasons within the Director's decision. The Petitioner begins briefly orienting on the Director's content relating to the record's inadequate showing of how the projections in the business documents were calculated, but he then moves directly into a discussion of how he will carry out the activities without any focus on the methodology used to estimate his projections. Then, the Petitioner commits the same error the Director discussed in the opinion letter: instead of detailing how the proposed endeavor itself has national importance, he extensively discusses the national importance of the logistics industry and only notes that his endeavor aligns with those services.

Simple alignment or shared common aspects with the broader industry are not sufficient to meet the first prong's national importance requirement. In focusing generally on the entire logistics sector, the Petitioner has not established his specific endeavor will substantially benefit and impact the field more broadly. Nor has he demonstrated he has the potential to widely advance and broadly affect U.S. strategic interests. *Id.* at 892. This misplaced focus does not address the *Dhanasar* decision's national importance requirements, nor does it adequately tie the Petitioner's endeavor to those business improvements. The Petitioner further reasons that because his organizations will be well staffed and positioned to capitalize on an increasing demand for logistics services, this suggests that the projections in the business plan are achievable. But those arguments are more oriented toward *Dhanasar's* second prong.

Even when the Petitioner finally discusses the proposed endeavor's national importance, he doesn't establish the business meets that standard. Instead, he attempts to draw a corollary between a national importance concept expressed in *Dhanasar*—the significant potential to employ U.S. workers or other substantial positive economic effects, particularly in an economically depressed area—and equates that to the economically distressed areas identified in the record. Despite the Petitioner apparently utilizing the terms "economically depressed" and "economically distressed" interchangeably, he did not demonstrate that these concepts have identical meanings.

And even if he had shown the two terms are effectively analogous, again, without demonstrating his projected job creation figures are more than hopeful speculation, he still hasn't sufficiently established the level of job creation he might add to any distressed areas. The Petitioner does not offer enough data for similar businesses in the area that might show his business plan's projections at least align with typical growth rates and revenue for a similar number of employees.

Were we to set aside all of these shortcomings, we would still conclude the arguments and evidence related to economically distressed areas the Petitioner offers on appeal appear to be new. Not only does the evidence he offers postdate the petition filing date, but it also does not appear that he advanced this concept before the Director. A petitioner must establish eligibility at the time the visa petition is filed. 8 C.F.R. § 103.2(b)(1), (12). USCIS may not approve a visa petition if the Petitioner was not qualified at the priority date but expects to become eligible at a subsequent time. *See Matter of Izummi,* 22 I&N Dec. 169, 175–76 (Assoc. Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Further, where a petitioner was put on notice of an evidentiary requirement (by statute, regulation, precedent decision, request for evidence, etc.) and was given a reasonable opportunity to provide the evidence—except in exigent circumstances and at USCIS discretion—any new evidence submitted on appeal will not be considered, and the appeal on the national importance issue will be adjudicated based on the evidence in the record as it existed before the Director. *Matter of Furtado*, 28 I&N Dec. 794, 801–02 (BIA 2024) and *Matter of Izaguirre*, 27 I&N Dec. 67, 71 (BIA 2017) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 195 n.5 (2024). If the Petitioner had wanted the submitted evidence to be considered, he should have submitted it in response to the Director's request for evidence. *Soriano*, 19 I&N Dec. at 766. Under the circumstances, it is unnecessary to consider the sufficiency of this new evidence submitted on appeal.

The following provides additional reasons why we agree with the Director that the Petitioner's business plan falls short of meeting his burden of proof on multiple matters. In the appeal brief under the bulleted section titled "Air Freight Activity," the Petitioner describes the process for shipping country-wide deliveries. Essentially, a single driver picks up a package from the client, transports it to the airport where it is loaded onto the designated airline, and once it arrives "at the destination airport, a dedicated vehicle completes the final delivery. The driver then updates the base, which logs the delivery details in the system. This operation requires one driver per collection and delivery vehicle, with additional staff for documentation handling and system updates at the base."

When the brief states this operation requires only one driver, it does not appear to account for the driver at the destination airport, unless the original driver who picked up the parcel from the client would themself ride the air transport and then somehow execute the delivery once at the destination airport. How that would be accomplished from the destination airport without a vehicle, however, is not explained. Alternatively, the recipient of the package might be expected to pick up their own delivery from the destination airport, but we question whether that would be a standard business model for a logistics operation. At any rate, this is but one example illustrating the business plan's inadequacies. The Petitioner cannot meet his burden of proof simply by claiming a fact to be true, without adequate supporting evidence. *See Chawathe*, 25 I&N Dec. at 376 (finding the filing party must submit relevant, probative, and credible evidence that leads the trier of fact to believe that the claim is "more likely than not" or "probably" true).

An additional questionable claim made within the business plan relates to the business office's location. The plan reflects the proposed endeavor's office is currently located in [redacted] Florida with a lease charging the organization $100 per month for rent. It is important to note that the Petitioner did not provide the lease reflecting this information. A review of the building at that address reveals it is a professional building currently renting space at $3.67 per square foot, and to achieve a space for approximately $100 per month at that rate would require the room to be slightly larger than five feet by five feet.[1] While this seems highly unlikely, we are unable to make any determination relating to this claim because the Petitioner did not submit the claimed lease for the record and we include it solely to illustrate another basis why we and the Director determined the business plan was not adequate to meet the Petitioner's burden of proof. In this instance, the Petitioner's statements made without supporting documentation are of limited probative value and are insufficient to satisfy his burden. *See Chawathe*, 25 I&N Dec. at 371–72 (discussing assertions that are not supported by probative material will not meet a filing party's burden of proof).

Because the Petitioner has not sufficiently established his proposed endeavor's national importance as required by *Dhanasar's* first prong, he has not demonstrated eligibility for an NIW of the job offer requirement.

[1] *Office Space For Lease*, Rofo (Aug. 2, 2024), https://www.rofo.com/commercial-real-estate/listings/FL/[redacted].html. Other office space is available in the area ranging from 100 square feet for $180 per month to 2,500 square feet for $3,750. Attorney Suites, OfficeSpace.com (Aug 2, 2024), https://www.officespace.com/fl/[redacted]

2. We Reserve *Dhanasar's* Remaining Second and Third Prongs

As we explain above, *Dhanasar's* second and third prongs require the Petitioner to demonstrate he is eligible for an NIW meeting additional requirements. But because the Petitioner has not established that his proposed endeavor satisfies the *Dhanasar* framework's first prong, he is not eligible for an NIW and further discussion of the second and third prongs would serve no meaningful purpose. Consequently, we will not address and we reserve the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.