U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33276646

Date: AUGUST 5, 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 business plan, the Petitioner states his proposed endeavor is to develop and serve as the chief executive officer of [redacted], an aesthetician clinic providing the following procedures: botulinum toxin, a wrinkle treatment procedure, facial and neck dermal fillers injection, lips dermal fillers injection, PDO threads, and radiesse collagen injectables. The plan states the corporation will be headquartered in Florida with two businesses located in Georgia and California and will focus on providing aesthetician services to women aged 40 to 64.

The Petitioner submitted evidence that he holds the equivalent of a United States bachelor's degree in business administration and over five years of progressive experience in business. 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, broadly enhance societal welfare, have national or even global implications, or would otherwise impact his field more broadly.

On appeal, the Petitioner asserts the Director applied a narrow interpretation of national importance. He claims his proposed endeavor has significant potential to employ U.S. workers and will have other positive economic effects through its creation of direct and indirect jobs, and contribution to job

growth and economic stimulation in Florida, Georgia and California. The Petitioner's business plan states the company will be located in underutilized business zones in Florida, Georgia and California. The business plan projects the company will hire 14 "full-time and part-time" employees the first year, increasing to 45 in the fifth year. The plan states it will generate 90 indirect jobs, but this is based on an employment multiplier for "other personal services," not aesthetician clinics specifically. The plan forecasts the company will have a net income of -$81,927 the first year increasing to $1,058,514 in the fifth year. The business plan states the aesthetician industry generates revenue of $2.9 billion and is expected to employ 164,848 people over five years to 2028. The business plan does not indicate that the projected employment of 14 to 45 people full- and part-time and the generation of 90 indirect jobs represents a significant potential to employ U.S. workers in an industry that employs 164,848 people. The plan also does not demonstrate that the company would have other substantial positive economic effects in an industry that generates nearly $3 billion. *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 also claims the Director overlooked the "broader societal impact of improving healthcare access and outcomes through specialized aesthetician services." The Petitioner asserts his proposed endeavor will enhance the overall well-being and self-confidence of individuals, thereby contributing to societal welfare. The Petitioner further asserts that his proposed endeavor aligns with federal initiatives aimed at improving healthcare access and fostering economic development in historically underutilized business zones. The Petitioner submitted articles on the medical aesthetics market, future of aesthetics injectables, rising demand for cosmetic procedures and dermatologic surgery, medical aesthetics attracting investors, 2022 state of the medical spa industry, and immigrant entrepreneurs. These articles address the importance of the medical aesthetics industry and immigrant entrepreneurs. However, 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 the medical aesthetics industry or societal welfare more broadly. *See id.* (explaining "we look for broader implications").

The Petitioner claims 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, but do not address his proposed endeavor. For example, D-O-V-T-[2] praises the Petitioner's work at [redacted] and states he "will make a wonderful and successful addition to any company." H-S- describes the Petitioner's successful restructuring of [redacted] and expresses confidence that he will "serve the U.S. national interest." S-M-W- praises the Petitioner's work at [redacted] and states he "will make considerable contributions to the U.S." I-P- recounts his successful partnership with the Petitioner and states the Petitioner will make "significant contributions to the development of the United States." While they attest to his past achievements and express confidence in his ability to contribute to the United States,

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

they do not discuss the Petitioner's specific proposed endeavor or any impact it would have in the medical aesthetics industry.

The Petitioner also submitted a letter from F-J-Q-, Assistant Professor of Professional Practice at [redacted] expressing his opinion that the Petitioner qualifies for a national interest waiver. F-J-Q- states the Petitioner's proposed endeavor has national importance because aesthetic clinics contribute "to the nation's overall well-being, self-confidence, and quality of life" and contribute to the economy by creating employment opportunities for skilled professionals. F-J-Q- references employment and revenue projections from the Petitioner's business plan but does not specify how the Petitioner's proposed endeavor would extend beyond his clinics' individual clients to impact societal welfare and the nation's economy 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.