U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32368838

Date: AUG. 9, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is an entrepreneur who 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 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

A. Eligibility for the EB-2 Classification

The Director determined that the Petitioner was eligible for the EB-2 classification as a member of the professions holding an advanced degree. Accordingly, the sole issue on appeal is whether the Petitioner merits an NIW of the EB-2 classification's job offer requirement as a matter of discretion. We agree with the Director's conclusion that he does not.

B. National Interest Waiver

The Petitioner has a background in finance, business, and management that includes a master's degree and a Ph.D. in those areas, as well as several decades of service in those industries. His proposed endeavor includes starting a company that will provide consulting, training, and education to individuals and organizations to better inform them about financial compliance and sound financial strategy.

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 much of the Petitioner's evidence noting:

- Although the support letters clarified and explained the Petitioner's background, their content did not illustrate how the proposed endeavor was of national importance;
- The opinion letter was overly generalized focusing on the market or industry and it failed to discuss the endeavor's business plan, the endeavor itself, the endeavor's prospective substantial economic impact, or any broader implications the endeavor would have in the field;
- While the articles and reports bore some relevance to the subject matter, they did not establish how the Petitioner's specific proposed endeavor stands to impact the broader field or otherwise has implications rising to the level of national importance;
- The Petitioner's background and qualifications were more related to *Dhanasar's* second prong than they were to the national importance requirement in the first prong;
- The business plan did not provide evidence for the number of employees he will hire at the end of five years, and the revenue projection appeared overly optimistic at the end of that same five-year period without providing a basis for the projections; and

- The Petitioner did not demonstrate the endeavor's benefits would extend beyond the area in which it would operate or its clients, and the filing did not illustrate an impact to the field, the industry, or the U.S. economy more broadly at a level commensurate with national importance.

In the appeal the Petitioner states that the Director did not properly assess the evidence. Although the appeal briefly touches on a few areas the Director noted in their decision, he does not contest or address the Director's conclusions in any meaningful way. First, the Petitioner claims the articles are credible and respected contributions to the field underscoring the significant impact and innovative nature of his work, and they are integral in substantiating the merit and national relevance and importance of his proposed endeavor. But the Petitioner does not address the basis the Director provided for discounting the value of the letters: they were related to the field but did not in any way speak to the Petitioner's proposed endeavor.

Because the Petitioner does not explain why the Director erred when analyzing the the articles' value, he has waived this issue in this appeal and in any proceeding relating to this petition. *Matter of Garcia*, 28 I&N Dec. 693, 693 (BIA 2023) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) and finding issues that are not meaningfully challenged in the appeal are waived); *Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (finding when a filing party mentions an issue without developing an argument, the issue is deemed waived). He also fails to adequately contest the Director's analysis of the recommendation letters and the opinion letter. These topics are also waived on appeal for the same reason as the above-mentioned articles. *Id.*

Next, the Petitioner claims his proposed endeavor aligns with national priorities and that his qualifications and experience position him to contribute to these areas by supporting government initiatives and policies. Not only is this a more appropriate argument under a separate *Dhanasar* prong, but also simply aligning with the government's priorities is not alone sufficient to meet the first prong's national importance requirement. In focusing generally on the entire financial consulting and training services sector's impact to U.S. businesses, 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. *Dhanasar*, 26 I&N Dec. 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 governmental initiative or policy improvements.

The only area the Petitioner meaningfully contests the Director's denial under *Dhanasar's* first prong relates to the proposed endeavor's business plan. The Petitioner claims the plan's financial projections are rooted in the global financial consulting industry's current trends and forecasts. He further claims "the global management consulting services market, valued at $316.5 billion in 2021, is expected to grow to $811.3 billion by 2031." The Petitioner does not explain how the global marketplace should reflect on the proposed endeavor's financial projections other than to indicate that if we were to consider the entirety of this industry around the world—in locales and countries that do not appear to be related to his endeavor—it is projected to grow over a ten-year period. The Petitioner does not offer salient arguments on this issue, nor does he provide data on trends where the business will be located.

In a similar vein, the Petitioner states the proposed endeavor's staffing projections are based on current and forecasted demand for financial consulting and training services globally. For support, the appeal brief points to two pages in the business plan; a "Risk Assessment" for the business and an academic explanation of what SWOT (Strengths, Weaknesses, Opportunities, and Threats) analysis means. The Petitioner does not explain how that portion of the business plan supports his staffing projections claims on appeal, nor are we persuaded the global market should support the Petitioner's claims in any meaningful manner.

And in the Petitioner's final argument, he narrows his focus from the global market to revenue growth in the industry within the United States. Much like the problems relating to his reliance on the industry globally, the Petitioner has not explained why national level growth statistics should have any measurable impact on his small business operating in an unspecified city in the state of Florida. This reasoning does not take into account that businesses in one location may fare differently than similar entities in other distinct parts of the state, much less from one part of the country to the next based on local factors that affect a small business. The Petitioner does not establish why his attempts to extrapolate the entirety of the national financial training and consulting services industry to what might occur within his small business is a persuasive argument.

The global or national marketplace is vastly different than a small local business that operates on a smaller scale and would need to focus on their own market or geographic area, where the global industry encompasses a vast market with diverse segments. Additionally, the entire industry includes established firms with extensive resources and capital that small startups lack. Nor do small businesses enjoy the brand recognition of many of the firms that make up the global industry. And finally, small startups haven't identified and implemented operational efficiencies that much of the larger firms comprising the global industry have developed.

In summary, the Petitioner has not demonstrated the Director erred when evaluating his claims under *Dhanasar's* first prong, nor has he shown that he has fulfilled its requirements.

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

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.