U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 31650627

Date: AUG. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of finance, 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 although the Petitioner qualified as an advanced degree professional, he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] The matter is now before us on appeal. 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.

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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates that:

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[1] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. 8 C.F.R. § 204.5(k)(2).

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third

- 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.*

A petitioner must identify the specific endeavor they propose to undertake. *Id.* at 889. On Part 6 of the petition, the Petitioner indicated that his proposed employment is financial manager and in his definitive statement, he stated that he intended to work as a "Financial Manager / Entrepreneur." In addition, the Petitioner provided a business plan which stated that his proposed endeavor is to establish "an independent financial and investment assessments firm that will act responsibly and transparently with its clients with the objective of providing comprehensive financial advisory and developing financial products, control systems and adequacy of investment portfolio services" and that he would be the owner, chief executive officer, and certified financial planner of the endeavor. The business plan also indicated that the endeavor's headquarters will be in [redacted] Illinois with expansion plans to operate in [redacted] Virginia, and [redacted] Alabama.

However, on appeal, the Petitioner repeatedly provides inconsistent information which calls into question the specifics of his proposed endeavor. For example, in addition to referring to his initially described endeavor, he states that his "proposed endeavor is to come to the United States to work as an Accounting Supervisor in the Financial Services Industry" and that he "intends to continue his career working in the U.S. business sector as an Accounting Supervisor in the Financial Services Industry." He also repeatedly references Mexico, providing such information as its gross domestic product and asserts his "in-depth knowledge of the business environment in Mexico will benefit U.S. companies and the U.S. economy" and that "[m]any U.S. companies are doing or planning to do business in Mexico to take advantage of the size of the Mexican economy and its vast market opportunities." But the business plan did not indicate that the Petitioner will do any business in Mexico. Furthermore, the Petitioner's resume and employments letters do not show that he has any experience either in or working with Mexico. Moreover, the Petitioner mistakenly and repeatedly uses feminine pronouns in several places in the appeal brief and claims that he will generate $5.9 million in revenue and 13 jobs during the first five years of operations in the state of Florida, but then states that his company will be in [redacted] The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 59192 (BIA 1988).

Because the Petitioner has not consistently described his proposed endeavor, we cannot conclude that he has sufficiently established its substantial merit and national importance. And because the Petitioner has not demonstrated that his proposed endeavor has substantial merit and national importance as required by the first *Dhanasar* prong, he is not eligible for a national interest waiver. Therefore, we reserve our opinion regarding the second and third *Dhanasar* prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 (1976) ("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

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in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

**ORDER:** The appeal is dismissed.