U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32770325

Date: AUGUST 22, 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 an advanced degree professional, as well as a national interest waiver of the job offer requirement attached to this classification. 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 did not establish eligibility for a national interest. 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.

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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] 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

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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

II. ANALYSIS

A. Substantial Merit and National Importance

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. Id. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual.

The Director determined that while the Petitioner established that the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance as set forth under the first prong of the Dhanasar analytical framework. We agree, for the reasons explained below.

The Petitioner asserts that his proposed endeavor is to "direct the operations of RPEC[2], a U.S.-based organizer and promoter of public and corporate events. . . as the Company's Chief Executive Officer and Strategic Consultant," using "his extensive experience in market research, competitive intelligence, demand planning, ticket and product planning, staff management, recruitment, and training of outsourced labor, while establishing and developing the operations of RPEC." He further asserts that RPEC "will produce and promote music events and festivals throughout the United States," and organize "public and corporate events, which will have a favorable impact on industries such as food and beverage, hotels, and travel and tourism." He contends that his company will support the concert and event promotion industry "in recovering from the negative effects of COVID-19 pandemic." He maintains that RPEC will "target both companies who are organizing corporate events as well as individuals attending them" and "will thoroughly assess the market in order to develop cultural projects that will help the local community increase awareness, nurture culture, and enable entertaining social gatherings." The Petitioner's business plan indicates that he will hire three employees in the first year and reach a total of six employees within five years as well as use the service of independent contractors, thereby creating "direct and indirect jobs which will aid in the recovery of the economy." The business plan also includes financial forecast data indicating that RPEC will have sales of $875,000 in the first year and ramp up to $2,088,625 in sales proceeds by the fifth year.

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

On appeal, the Petitioner asserts that the Director did not give due regard to his resume, business plan, evidence of his work in his field, letters of recommendation, or "industry reports and articles demonstrating the national importance of [his] proposed endeavor as well as the steep shortage in the U.S. of professionals with his profile in the field."

In the present case, the Petitioner relies primarily on the importance of the concert and event promotion industry to the U.S. economy. We first note here that the Petitioner's experience and abilities in his field relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Dhanasar at 890. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Id. at 889. In Dhanasar, we also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." Id. A local physical therapy business and a shortage of physical therapists in the United States does not render the proposed endeavor nationally important under the Dhanasar framework.

Although the Petitioner contends that his company, which will be based in Florida, will "create further employment opportunities and qualify individuals to work in the domestic event organizing sector, fulfilling U.S. industry needs and benefitting the wider U.S. economy," his endeavor does not include any specific plans or demonstrate that the benefits to the regional or national economy resulting from his endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890. Instead, the Petitioner supports his claims with references to third party documentation, asserting that "industry reports and articles demonstrat[e] the national importance of [his] proposed endeavor." He also asserts that the national importance of his endeavor is supported by industry data indicating a need for event planners "who can meet the needs of U.S. businesses and boost the U.S. economy as a whole." However, generalized conclusory statements that do not identify a specific impact to the field have little probative value.[3]

The Petitioner has not provided corroborating evidence, aside from claims in his statements and his business plan, that his company's activities stand to provide substantial economic benefits to the region of Florida or the United States, and his statements are not sufficient to demonstrate his endeavor has the potential to provide economic, societal, and security benefits to the United States. Further, while he contends that his company will have sales proceeds of $2,088,625 by the fifth year, these projections are not supported by relevant or probative evidence, details showing their basis, or an explanation of how they will be realized, nor do they demonstrate a significant potential to substantially impact the regional or national economy. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. Further, the Petitioner has not demonstrated that his business would benefit an economically depressed area. In the end, the economic benefits that the Petitioner claims

[3] *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

will result from his endeavor depend on numerous factors and the Petitioner does not offer a sufficiently direct evidentiary tie between his proposed endeavor and the claimed economic results.

We recognize the importance of the concert and event promotion industry; however, the Petitioner's stated intention – to produce and promote music events, festivals, and corporate and other public events throughout the United States" – coupled with reports and articles regarding the significance of the concert and event promotion industry to the U.S. economy is insufficient to establish the national importance of the Petitioner's specific proposed endeavor. As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under Dhanasar's second and third prongs. See INS v Bagamasbad, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); 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).

ORDER: The appeal is dismissed.