U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32456564

Date: AUG. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an insurance sales agent and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a discretionary 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 he does not qualifies for the EB-2 classification based on exceptional ability or as an advanced degree professional, and the record also did not demonstrate that a waiver of the required job offer, and thus labor certification, would be in the national interest. This matter is now before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Petitioners bear the burden of establishing eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions, which states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

The Director concluded that the record did not establish that the Petitioner is an advanced degree professional, a finding which he does not dispute on appeal. The Director also determined that the

[1] *See, e.g.*, *Brasil v. DHS*, 28 F.4th 1189 (11th Cir. 2022) (concluding that the national interest waiver determination is nonreviewable and discretionary in nature).

Petitioner did not establish that he is a person of exceptional ability because the evidence did not satisfy at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii).[2]

The remaining issue on appeal is whether he warrants a discretionary national interest waiver. The Director determined that although the Petitioner's proposed endeavor has substantial merit, the record did not establish that it is of national importance and thus did not meet *Dhanasar*'s first prong.

Under the *Dhanasar* framework, the first prong, "substantial merit" and "national importance," focuses on the specific endeavor the Petitioner proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit under this prong may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In assessing whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The Petitioner intends to work as an insurance sales agent and also plans to operate his own business, [redacted] (the Company) that will engage in sector-specific services by providing personalized insurance advice and products.

On appeal, the Petitioner does not submit any new evidence or specifically identify any error in any of the Director's findings pertaining to *Dhanasar*'s three prongs. We have nevertheless considered the Petitioner's appeal assertions of his eligibility for a national interest waiver, and conclude that the record does not establish that his proposed work has national importance because the evidence does not show it would have significant potential to employ U.S. workers, broadly impact the industry, or otherwise have broader economic or societal implications indicating national importance.

In asserting that his proposed endeavor has national importance, the Petitioner primarily reasserts his extensive experience in the insurance field, as indicated in his statement, resume, business plan, and support letters, and also continues to rely on general market reports and articles for the insurance industry and small businesses. He maintains that, given his expertise, extensive background, and high demand for experienced insurance agents, he is extremely well positioned to significantly contribute to the enormous insurance market and his Company would in turn impact national or even global economy. But the Petitioner's reliance on his experience and expertise pertains to *Dhanasar*'s second prong, which relates to whether a petitioner is well positioned to advance the proposed endeavor and "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890. For *Dhanasar's* first prong, at issue here, we look to evidence demonstrating the "potential prospective impact" of the Petitioner's proposed endeavor, rather than his background and skills or the importance of the specific field or industry in which he proposes to engage based on his qualifications. *Id.* at 889. In doing so, we evaluate whether the specific endeavor he proposes to undertake has broader implications within a field or industry. Although we acknowledge that the Petitioner's proposed endeavor as an insurance sales agent could have a positive impact on his future insurance business and customers, he has not persuasively explained, and the evidence does not demonstrate, how his proposed work would have broader implications for the insurance industry and U.S. economy as he claims, beyond his Company and its potential clientele.

[2] Although we acknowledge the Petitioner's appeal arguments challenging the Director's finding on the underlying EB-2 classification eligibility based on exceptional ability, given our resolution of this appeal on a separate dispositive issue as discussed below, we do not reach the issue of exceptional ability and hereby reserve it.

In *Dhanasar*, we also noted that endeavors with "significant potential to employ U.S. workers" or those having "substantial positive economic effects, particularly in an economically depressed area" *may* have national importance. *Id.* at 890. The Petitioner's business plan includes an organizational chart and a five-year plan indicating that his Company will initially have five employees comprising one insurance sales agent, one commission-based "junior" insurance agent, one administrative support worker, one insurance claims and policy processing clerk, and one receptionist and information clerk; and by year five, a total of nine employees comprising two insurance agents, three commission-based "junior" insurance agents, two insurance claims and policy processing clerks, one administrative support worker, and one receptionist and information clerk. However, the record does not include any evidence-based justifications for the staffing projections and the claimed need to employ the stated numbers of employees. The record also does not include any description or related evidence as to the hiring criteria or process. Even assuming the accuracy of the five-year staffing projections, it is unclear how a small business with nine employees indicates "significant potential to employe U.S. workers."

The Petitioner on appeal nonetheless continues to rely on his business plan and maintains that his Company by its fifth year will generate significant economic benefits and indirectly create 13 to 51 jobs. The business plan includes financial conjectures projecting a total revenue of over $3.7 million by year five. However, the record lacks corroborating evidence that would objectively substantiate this projection, such as an independent basis for the Company's claimed net worth, payroll and tax expenses, and the source of the claimed revenue. Although the Petitioner continues to highlight that his work also will have major *indirect* economic impact, creating even more jobs and residual business activities, the record does not sufficiently support that the claimed indirect impact would be directly attributable to his proposed endeavor. Similarly, while we acknowledge the assertion that his Company will also engage in educational, environmentally friendly, and socially conscious activities, as well as the claim that it would provide peace of mind to customers through excellent service in risk management, the record does not include any specific probative evidence as to how his proposed work would broadly benefit the insurance industry and individuals' well-being.

The business plan by itself thus does not establish a significant potential to employ U.S. workers or substantial positive economic or other benefits having national importance. Further, the Petitioner's reliance on his aspirational assertions, support letters, and general market reports do not otherwise validate the business projections or demonstrate how he will specifically achieve his goals. He also claims that his Company "probably" will have to embrace cutting edge technology, diligently "adopt an industry-wide cultural shift," and utilize his innovative business model to facilitate growth and benefit the insurance industry as a whole and the customers it serves. However, the Petitioner does not specifically claim, and the record does not indicate, that his proposed business is in fact a novel, innovative enterprise in any way or that the insurance industry has ever adopted his claimed business model and expertise. Lastly, the Petitioner's assertion that his Company will also help impoverished communities remains unsupported by any independent, probative evidence.

While we acknowledge the Petitioner's desire to contribute to the insurance industry and its economy, he has not established with specific, probative evidence that his proposed endeavor will have broader implications in his field, have significant potential to employ U.S. workers, or have other substantial positive economic or societal effects. The Petitioner therefore has not met his burden of establishing that his proposed work has broader national implications as contemplated by the *Dhanasar* framework.

Accordingly, the Petitioner has not established the national importance of his proposed endeavor, and therefore has not established eligibility for a national interest waiver.

As the identified basis for denial, the Petitioner's inability to meet *Dhanasar*'s first prong, is dispositive of this appeal, we decline to reach the remaining appeal arguments as to the Director's other grounds for denial, including that the record also does not establish the second and third prongs of the *Dhanasar* framework for a national interest waiver or underlying EB-2 classification as an advanced degree professional or person of exceptional ability. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to reach issues unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.