U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32824864

Date: AUG. 23, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a startup incubator director, 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 Nebraska Service Center denied the petition, concluding that he qualified for underlying EB-2 classification as a member of the professions holding an advanced degree, but that he had not established 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 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

The Director found that the Petitioner qualified for the underlying EB-2 visa classification as a member of the professions holding an advanced degree, and that his proposed endeavor has substantial merit and that he is well-positioned to advance the endeavor as required under prongs one and two of the *Dhanasar* framework. However, the Director concluded that the Petitioner did not establish the national importance of the proposed endeavor and that, on balance, a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

On appeal, the Petitioner contends that the Director did not properly review and analyze the Petitioner's national importance claims and all of the relevant evidence under the first prong of *Dhanasar*. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar's* first prong, the Petitioner indicated that his proposed entrepreneurial endeavor would be in [redacted] Nevada and would involve providing "early-stage support to startups and companies within an incubator program" by "scout[ing] and select[ing] promising startups for admission, designing and implementing tailored mentorship and training programs," and "assist[ing] with funding and strategies to achieve a sustainable success." The Petitioner asserts that he will focus on helping businesses that will be involved in the areas of science, technology, knowledge, and innovation (STKI) and science, technology, engineering and mathematics (STEM). He provided a document labeled as a comprehensive strategy in which he expressed that the proposed endeavor will "facilitate the seamless transfer of technology from esteemed academic and research institutions to commercial entities operating within the United States." To this end, the Petitioner claims that he intends to use his past experience in Chile as a professor and entrepreneurial advisor to "meticulously identify breakthrough technologies that hold significate potential for successful commercialization" and thereafter provide guidance to private or public research and development entities, as well as universities, in formulating "robust intellectual property strategies and negotiating licensing agreements" for their own endeavors. Finally, the Petitioner indicated that he would provide STEM and STKI career programs in public schools in the United States, with a particular focus on addressing the needs of minorities.

The record includes letters of support from colleagues and business leaders with whom the Petitioner worked in Chile and advisory opinion letters from individuals who described the Petitioner's education and experience as a professor and business advisor in Chile. He included published materials about, for example, the Nevada business climate, Chilean business entrepreneurs with an impact on the U.S. economy, and the U.S. economy and business incubator trends. The Petitioner included a business plan for the proposed endeavor, which describes his intention of fostering and developing other business startups in the [redacted] Nevada area and potentially to the West Coast.

Upon review, we adopt and affirm the Director's decision as it relates to national importance under prong one of the *Dhanasar* analysis. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Contrary to the Petitioner's assertions on appeal, the Director properly reviewed and analyzed the Petitioner's national importance claims and the relevant evidence under the first prong of *Dhanasar*, including his business plan and employment creation assertions, and discussed their deficiencies.

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." *See Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* 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.* at 890.

The Petitioner maintains on appeal that his proposed work as an entrepreneur who will direct a startup incubator could benefit U.S. businesses focused on STEM and STKI technologies and will be of national importance to the United States in those industries. He further contends that his undertaking could galvanize the entrepreneurial ecosystem of [redacted] and potential the region between [redacted] and the West Coast of the United States. Finally, the Petitioner claims that he also indicated that he had proposed to lead middle and high school programs in the United States to encourage young women and minorities to pursue STEM and STKI careers and therefore create a more diverse and skilled U.S. workforce, but that the Director failed to consider the positive societal benefits of this proposed mentoring. The Petitioner provides copies of some prior appellate decisions from our office where we advised that other entrepreneurs might be able to establish the national importance of their own endeavors.[2]

Upon review of the record, we agree with the Director that the Petitioner has not established his proposed endeavor of providing advice to startup entities sufficiently extends beyond his company and its prospective clientele to impact another industry or field more broadly, at a level commensurate with national importance. Although the Petitioner's statements reflect his intent to provide valuable entrepreneurial advice for his clients (including female minorities in U.S. middle and high schools), he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. 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, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clientele to impact the fields

[2] These decisions were not published as a precedent and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c).

of science, technology, mathematics, innovation, knowledge, or engineering, or international business initiatives between Chile and the United States, more broadly at a level commensurate with national importance. To the extent that he also proposed to mentor young women in U.S. high schools, the record also lacks evidence that this part of his proposed endeavor will have positive social impact beyond those specific students whom he proposed to mentor.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although he proposed to provide consulting services to other business startups in the United States and asserts the growth potential of his endeavor, the Petitioner has not explained how, or provided corroborating evidence showing, that his endeavor's future staffing levels, business activity, associated tax revenue, and inter-country STEM and STKI initiatives would in fact provide substantial positive economic benefits to the United States. He discusses various projects that he has been involved in in Chile which he claims he wishes to help set up in the United States, and discusses the employment and sales figures for other U.S. entities that he claims are comparable to his proposed endeavor and future clients. However, the record does not show that his prior work with entities in Chile is transferrable to his U.S. proposed endeavor. Moreover, financial and employment information about unrelated entities is not sufficient demonstrate that the benefits to the regional or national economy resulting from the Petitioner's own undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Also, apart from his assertions, including in the business plan, the Petitioner has not offered sufficient evidence that the area where the proposed entity will operate in [redacted] is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through increased employment levels, business activity, or tax revenue. Accordingly, the Petitioner has not shown that the proposed work meets the first prong of the *Dhanasar* framework relating to national importance.

Because the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver as a matter of discretion. As this is dispositive of this appeal, further analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.