U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33377334

Date: AUG. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks second preference immigrant classification (EB-2) as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 qualifies for the EB-2 classification as an individual of exceptional ability, he did not establish that a waiver of the requirement of a job offer, and thus of a 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. Our precedent, *Matter of Dhanasar*, 26 I&N Dec. 884 (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 Third, Ninth, Eleventh, and D.C. Circuit Courts to conclude the national interest waiver is discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Director determined that the Petitioner demonstrated eligibility for the underlying EB-2 classification as an individual of exceptional ability but did not analyze the evidence in reaching this conclusion. Regarding the Petitioner's request for a national interest waiver, the Director concluded that the Petitioner demonstrated the substantial merit of the proposed endeavor but not its national importance under the first prong of *Dhanasar*.[2]

Because we conclude that the Petitioner has not established his endeavor's national importance, as discussed below, we need not reach the question of whether he qualifies for the EB-2 classification as an individual of exceptional ability and reserve our opinion regarding this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

On appeal, the Petitioner contends that the Director misunderstood his endeavor and that the previously submitted industry reports and articles corroborate his endeavor's national importance. The Petitioner also asserts that the Director did not review the evidence in totality and evaluated his business plan in isolation while analyzing the endeavor's potential for economic impact and job creation. We find the Petitioner's claims unpersuasive.

Here, the Director correctly identified the Petitioner's endeavor as "working as an entrepreneur in the field of business development" and his consulting company as "[s]pecializing in comprehensive business-to-business solutions for international trade." The Director's description of the Petitioner's endeavor matches the Petitioner's statements - that he intends to be an entrepreneur operating and managing his own logistics consulting company, [redacted] established in 2019 in Florida,[3] and that this company will assist entrepreneurs and small and medium-sized U.S. businesses "in navigating the challenges of global trade, thereby enabling them to establish a strong presence in foreign markets and contribute significantly to the U.S. economy." Therefore, we do not agree with the Petitioner's claim that the Director's conclusion was "based on a fundamental misunderstanding of [the Beneficiary's] proposed endeavor."

While we acknowledge that the Petitioner's endeavor assisting businesses in global trading of goods has substantial merit, the relevant question for determining the endeavor's national importance is not

[2] The Director also found that the Petitioner did not meet the second prong, being well-positioned to advance his endeavor, or the third prong, that, on balance, waiving the job offer requirement would benefit the United States.

[3] The record indicates that the Petitioner has worked as CEO of [redacted] based in Brazil, since 2010, and the company appears to have assisted clients in importing machinery parts for bicycles, motorbikes, or automobiles.

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." *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner contends that articles and publications in the record "serve as corroborating evidence of [the Beneficiary's] statements and projections for the impact of his endeavor." For example, the Petitioner submitted studies from the United States Institute of Peace and W.E. Upjohn Institute for Employment Research discussing the long-term impact of employment opportunities and the economic benefits of job creation in economically distressed communities. The Petitioner also included articles on other topics, such as the value of foreign investment, the role and effects of entrepreneurship on economy, and the benefits of doing business with the Latin American countries, especially Brazil.[4] But these articles only provide a general overview of the field, benefits of his profession, and the importance of entrepreneurship and job creation without addressing the Petitioner's specific endeavor or how it will impact economically distressed areas. Therefore, such evidence is not sufficient in establishing the national importance of the proposed endeavor.

Moreover, the Director properly scrutinized the business plan to evaluate whether the Petitioner's company will have significant economic effects, as contemplated in *Dhanasar*: "[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. In terms of job creation, the Petitioner's business plan projects hiring 17 direct employees and a total payroll of $1,094,000 by the fifth year of the business activities. However, the business plan does not offer sufficient details of the basis for these projections or adequately explain how these staffing and financial targets will be realized.[5] In addition, the Petitioner has not explained or provided evidence regarding how his business operations will impact an economically depressed area. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Any offer of goods or services has the potential to impact the economy; but aside from claims made in the business plan or his statements, the Petitioner has not sufficiently provided corroborating evidence of the company's economic impact.

We will also evaluate other evidence on record, including recommendation letters and expert opinion letters, to determine whether the endeavor has national importance due to its broad impact in the field. *Dhanasar* states: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Dhanasar*, 26 I&N Dec. at 890.

The Petitioner submitted expert opinion letters from university professors of supply chain management and strategic management/entrepreneurship. However, the letters generally describe the three prongs of *Dhanasar* and summarize the information already provided by the Petitioner's resume, business plan, and recommendation letters, such as his educational and employment background, the mission

[4] The Petitioner also included a chemical engineering journal on alternative vehicular fuels and claimed that his endeavor will have an impact on sustainable mobility (such as reducing carbon emission through new forms of transportation, including electric bicycles) in the business plan. However, the relevance of such claim and evidence is unclear as the Petitioner identified his endeavor as consulting businesses in global trade and entering foreign markets.

[5] In his plan for future activities, the Petitioner states that he "intends to employ – both directly and indirectly - 48 to 272 workers" within the first 5 years of operations.

of his company, and statistics and outlook on relevant industry and occupations, before concluding that the Petitioner is eligible for the national interest waiver. The authors do not provide other persuasive details regarding specific impact of the Petitioner's endeavor or his methodology to the field of supply chain management or international trade. Here, the advisory opinion is of little probative value as the authors do not meaningfully address the proposed endeavor's impact and why it would have national importance.

The Petitioner also included reference letters that generally praise his skills as a consultant who worked for various importers in Brazil, such as understanding market trends and customer needs, his acumen in supplier selection process, professionalism, and dedication to delivering products from trusted suppliers. While the recommendation letters evidence the high regard for the Petitioner from his previous clients, they do not address any processes or methodology directly attributable to the Petitioner that would impact the industry overall. In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, the totality of the evidence presented here does not demonstrate how the proposed endeavor's impact would extend beyond the company's clients and employees to affect the region or nation more broadly. *Id.* at 893.

Accordingly, we conclude that the Petitioner did not establish national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision and therefore, he has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs of *Dhanasar*.[6]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[6] *See INS v. Bagamasbad*, 429 U.S. at 25 (stating that "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 Dec. at 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).