U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33360668

Date: AUG. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business professional, 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. *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 the Petitioner did not establish that a waiver of the required job offer and 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.[1]

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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[2] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

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[1] A petitioner must appeal an unfavorable decision within 33 calendar days of the date it was mailed. 8 C.F.R. § 103.3(a)(2)(i) and 103.8(b). The Petitioner's Form I-290B was received 78 days after the required period. However, the Petitioner asserts he did not timely receive the Director's decision. Because the Director's decision lacked critical address information (block number, zip code, and country), we accept the Petitioner's assertion as true, and will adjudicate the appeal as if it has timely arrived.

[2] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,[3] 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
- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

II. ANALYSIS

The Petitioner filed this petition on September 15, 2023. After analyzing the initial evidence, the Director issued a request for evidence (RFE) on September 20, 2023, noting the deficiencies in the record, to which the Petitioner timely responded on December 12, 2023. The Director denied the petition concluding that although the Petitioner is eligible for EB-2 classification as an advanced degree professional,[4] he did not establish that a waiver of the job offer, and labor certification requirement, is in the national interest because he did not meet any of the three *Dhanasar* prongs.

As stated above, a petitioner must establish that they meet all three prongs of the *Dhanasar* framework to obtain a national interest waiver. If even one of the prongs is not established, a petitioner is ineligible for this waiver. Accordingly, we will analyze the Petitioner's evidence under prong one and, as explained below, because he has not established his eligibility under that prong, we decline to reach and hereby reserve the Petitioner's arguments regarding the second and third prongs of the *Dhanasar* framework. *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"); *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).

A. Prong One: Substantial Merit and National Importance of the Proposed Endeavor

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. 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

[3] *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).

[4] We agree with the Director's assessment of the Petitioner's credentials, and that he has established he is an advanced degree professional.

occupation. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. 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. *Id.* As such, we will first identify the Petitioner's endeavor as shown in the record. Then, we will evaluate the Petitioner's evidence in support of the endeavor's substantial merit and national importance.

In evaluating the Petitioner's proposed endeavor, we consider his Form I-140, 2023 business plan, and appeal statement in which he explains that he will work as a business management consultant, and chief operating officer (general manager) of his own enterprise. The focus of his enterprise will be to support established U.S. manufacturing companies and startups to reach their full potential in international markets, with a focus on expanding the "Made in the USA" or "Brand of USA" footprint for telecommunications products in the Middle East, North Africa, Southeast Asia, and Southwest Asia. He asserts that his sales, consulting, supply chain management, and business experience together with his vast network of contacts in those regions of the world, will challenge the dominance of Chinese made products, and make significant contributions to the economic growth and vitality of the U.S. manufacturers and startups who will produce the telecommunication products he intends to sell. As such, based on the totality of the relevant evidence, we agree with the Director that the Petitioner has established, by a preponderance of the evidence, that his proposed endeavor has substantial merit. Because the endeavor has substantial merit, we turn to whether the proposed endeavor is of national importance, as contemplated by *Dhanasar*.

On appeal, the Petitioner asserts the Director erred and misconstrued or misunderstood the evidence he presented to establish his proposed endeavor's national importance and overlooked the broader implications and potential economic effects of his proposed endeavor. Specifically, the Petitioner asserts the Director did not consider the economic projections, and the substantial impacts he highlighted in his business plan. He maintains the national importance of his endeavor stems from its "creation of employment opportunities . . . reduction in unemployment rates and fostering economic stability" as well as the "innovation and technological advancements, [which] can enhance the nation's global competitiveness," and the "potential for exports and trade [which would] open up new revenue streams and contribut[e] to a favorable trade balance." He further maintains that because "healthy competition into a market can drive efficiencies, benefitting consumers, and fueling overall economic growth," his endeavor is of national importance. The Petitioner lists the additional impacts to stem from his proposed endeavor as follows: economic diversity and resilience, which stems from a thriving entrepreneurial venture; increased tax revenues, which support public services and government initiatives; national security by supporting and increasing the U.S.'s domestic supply chain of manufacturers; and multiple economic benefits from supporting startups, such as innovation, a healthier entrepreneurial ecosystem, which attracts skilled workers from around the world, and community development. He asserts all these impacts are sufficiently broad to meet *Dhanasar's* national importance standard.

We acknowledge the Petitioner's assertion that he will "recruit 12 new full-time jobs initially . . . [and] potentially recruit a total of 41 employees excluding [himself]" and will generate a total revenue of $6,180,013 by his enterprise's fifth year of operation. He asserts that his expansion of the "Made in the USA" brand campaign will lead to even more job creation. In addition, because [redacted] Texas is an economically depressed area, he asserts his business will enhance economic opportunities there,

which is an additional factor sufficient to establish national importance under *Dhanasar* because the decision states 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 . . . may well be understood to have national importance." *Dhanasar*, 26 I&N Dec. at 890. We acknowledge his assertion that in time, the economic success of his endeavor will lead to more monetary investments, and greater prosperity in the regional economy of [redacted] However, even assuming all the projections in the business plan are accurate and attained, and we consider the ripple effects of hiring 41 workers in an economically depressed area, the record lacks evidence demonstrating the projections rise to the level of national importance. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (standing for the proposition that assertions must be supported with relevant, credible, and probative evidence).

As contemplated by *Dhanasar*, we examine the record to determine if there is sufficient evidence to conclude the Petitioner's "undertaking may have national importance . . . 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 893. Here, the Petitioner has not submitted evidence to support the conclusion that his endeavor will impact the fields of sales, marketing, customer relations, telecommunications, information technology, imaging, and electronics at a level commensurate with national importance.[5] *Matter of Chawathe*, 25 I&N Dec. at 375-76. On appeal, the Petitioner asserts that the Director overlooked the "core objective" of his endeavor, which is "to provide beneficial services to underperforming start-ups, mobile device manufacturers, and U.S. policymakers who are not fully capitalizing on the strength of the "Brand of USA" in international markets." Moreover, in his RFE response, the Petitioner emphasized the importance of his proposed endeavor to these fields, particularly in terms of innovation, increased exports and resulting job creation as well as the "Made in the USA" brand campaign he seeks to implement, which he asserts aligns with the Biden Administration's initiatives to promote economic growth. We acknowledge the Petitioner's assertions; however, they lack probative evidence to support them. *Id.*

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Many of the Petitioner's assertions speak to the substantial merit of his endeavor, however they do not establish its national importance. *Dhanasar*, 26 I&N Dec. at 893. For example, in *Dhanasar*, we determined that while proposed classroom teaching activities in STEM may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance. *Id.* Similarly, here, while the Petitioner's professional services may be highly beneficial to his clients and partners, this is not indicative of a broader impact on the fields of sales, business consulting, telecommunications, information technology, imaging, and electronics, in general.

[5] The Petitioner correctly pointed out that the Director misstated the field of his endeavor as video and audio production. Notwithstanding this misstatement, because we agree with the Director's determination that the national importance of his proposed endeavor is not based on the importance of the field or industry in which the endeavor will take place, we will not remand the matter for this reason. *See Dhanasar,* 26 I&N Dec. at 889.

Finally, we acknowledge the Petitioner appears to be a highly skilled and accomplished professional. However, as the Director pointed out, the first prong generally does not consider the Petitioner's professional qualifications, work experience, business partnerships, or letters of support from investors, instead, those factors are considered in prong two, where we analyze whether the Petitioner is well-positioned to carry out his endeavor. *See Dhanasar*, 26 I&N Dec. at 890. Moreover, the Director explained that a shortage of sales professionals would not be sufficient to establish national importance. This is because the Department of Labor addresses labor shortages through the labor certification process. Finally, the Director noted that the Petitioner's assertions with respect to the information technology sector's importance does not render his endeavor nationally important under the *Dhanasar* framework. The Petitioner's business plan relies on the information technology sector's contribution to the U.S. gross domestic product to assert his endeavor's national importance. However, as the Director correctly pointed out, the Petitioner's assertions relate to the importance of the field, and not to his proposed endeavor. As such, we agree with the Director's determination on these matters.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.