U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34799844

Date: DEC. 3, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 Texas Service Center denied the petition, concluding that the Petitioner qualified for 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**.** On appeal, the Petitioner submits additional documentation and asserts that he is eligible for the benefit sought. 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.

To qualify for a national interest waiver, a petitioner must first show eligibility 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. If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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. 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
- On balance, waiving the job offer requirement would benefit the United States.

[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 Director determined that the Petitioner qualified as an advanced degree professional but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we conclude that the Petitioner has not met the first prong of the *Dhanasar* framework and will dismiss the appeal accordingly.

The first *Dhanasar* 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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.

In the initial filing, the Petitioner stated that his proposed endeavor was to provide services as an accountant. The nontechnical job description on the petition stated the following: "prepare financial statements, budgets & reconciliations, analyze trends, costs & obligations. Install systems." The Director issued a request for evidence in which they requested, in part, additional evidence to establish that the Petitioner's proposed endeavor had substantial merit and national importance, noting that the Petitioner's statements "failed to provide specific insight as to what he intends to do as an Accountant in the field of Accounting beyond continuing his employment in the United Sates."[2]

In response to the request for evidence, the Petitioner stated that his proposed endeavor would be to focus on the "accounting business," specifically in the "area of audit, particularly with regard to realty management companies." The business plan submitted in support indicated that the Petitioner would establish a company and "introduce innovative solutions to address the challenges businesses and organizations face in managing their financial affairs." The business plan also noted that the Petitioner will "establish a platform that revolutionizes accounting and audit processes, enhances transparency, and fosters economic revitalization." The Petitioner did not provide further detail on the specific prospective occupation or proposed endeavor that he would focus on to illustrate the nature of the work that he would perform during his day-to-day work activities. Nor did the Petitioner provide a detailed description explaining the manner through which he would prospectively deliver these services, supported by documentary evidence.

The Director denied the petition, concluding that the record did not establish that the Petitioner qualified for a national interest waiver because he did not meet the 3-prong *Dhanasar* framework. In regard to prong one, the Director determined that while the Petitioner had established substantial merit,

[2] The Director also requested additional documentation to establish EB-2 eligibility and the second and third *Dhanasar* prongs.

he had not offered sufficient information and evidence to demonstrate that the prospective benefit of his proposed endeavor rose to the level of national importance. On appeal, the Petitioner highlights the evidence he submitted in support of his petition and in response to the Director's request for evidence and maintains that he has demonstrated the proposed endeavor's national importance. He asserts that his proposed endeavor "will address HOA problem (sic) which affects millions of homeowners all over the nation, transform management companies' audit landscape, ensuring transparent and ethical service delivery."

The record reflects the Director's consideration of all evidence in the totality. The Petitioner's general objections on appeal regarding his eligibility for the EB-2 classification are insufficient to overcome the conclusions the Director reached based on the evidence submitted by the Petitioner. The Petitioner has not articulated on appeal how the Director erred in finding that the record did not demonstrate the proposed endeavor has national importance. The record does not offer evidence sufficient to translate *how* the Petitioner's proposed endeavor of providing "accounting and auditing services" for his prospective clients stands to sufficiently impact U.S. interests or the relevant accounting and audit sector more broadly at a level commensurate with national importance. The Petitioner has not established on appeal that his intent to apply his knowledge to his prospective clients is an activity that will have a broad impact.

As for the Petitioner's assertion that his proposed endeavor will create jobs and contribute to the nation's economy, he has not demonstrated that the endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. *See Dhanasar* at 890. Absent probative evidence to show the realistic potential of the Petitioner's company to operate at all, it is not evident that the company will generate revenue to create jobs, to expand, or to otherwise notably impact the economy. The record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's pursuits would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Id.*

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *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 alternative issues on appeal where a noncitizen is otherwise ineligible). The petition will remain denied.

ORDER: The appeal is dismissed.