U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34772048

Date: DEC. 03, 2024

Appeal of Nebraska 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 EB-2 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 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. The matter is now before us on appeal.

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 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;

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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 qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner indicated that he planned "to develop and implement business models and strategies through commercial, digital marketing, auditing, delivery logistics, and customer experience and loyalty management plans." He stated that he "intends to organize technological solutions and develop strategic planning projects to improve productivity and change management and prevent business risks." The Petitioner further explained that "[h]e will conduct his endeavor through the creation of his own company, [redacted] that will provide consulting services in finance, e-commerce, telecommunications, CRM-CEM technological solutions, technological development & digital transformation, product and market research, where he will help improve the business and financial strategies of U.S. companies and solidify sales through digital channels and marketing tactics, creating personalized strategies for each business model."

The Petitioner also offered a personal statement discussing his work experience and intent to work in the U.S. as an entrepreneur. He asserted that he plans to assist U.S. companies "in the process of consolidating sales through digital channels, and marketing tactics, creating personalized strategies for each business model and helping to see the world in a different way, to discover opportunities that perhaps they would never have imagined and to achieve results that unite what is with what can be." In addition, the Petitioner stated that he intended "to establish my own company called [redacted] which I am the CEO to reach more potential customers and offer consulting services."

In response to the Director's request for evidence (RFE), the Petitioner provided an additional personal statement discussing his proposed endeavor. He asserted that his undertaking stands "to contribute to U.S. economic competitiveness by innovating technical solutions and business models to grow U.S. small and medium sized businesses." The Petitioner also indicated that he plans to "encourage clients to innovate in their products, services, mindset, and processes to stay to generate new growth opportunities that contribute to the national technological and economic competitiveness." He further stated that his proposed work is aimed at addressing the following reasons why companies fail:

- Lack of proper business planning and management
- Lack of adequate funding
- Lack of knowledge of the market
- Lack of adaptive ability to change
- Teamwork and personnel management
- Legal and regulatory issues

A. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *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. *Id.* The Director determined the Petitioner's proposed endeavor has substantial merit. We agree.

The Director concluded, however, that the Petitioner did not establish the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish the potential prospective impact of his proposed services and company.

The Petitioner's evidence included his business plan for [redacted] This business plan provides industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company will employ 3 personnel in year one, 5 in year two, 7 in year three, 7 in year four, and 10 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while section 7.7 of his plan offers revenue projections of $132,000 in year one, $193,347 in year two, $290,808 in year three, $427,924 in year four, and $629,690 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

The Petitioner also submitted articles on the importance of the U.S. freight system, the logistics industry, financial efficiency, growing small business exports, the financial planning and advice industry, COVID-19 relief options, and the American Rescue Plan. The record also includes information about achieving and maintaining small business success, the benefits of digital transformation, modernizing information technology for a digital era, navigating the coronavirus crisis, digital transformation in the fashion industry, small business growth, the American jobs plan, promoting competition in the American economy, the Inflation Reduction Act, the ways small businesses drive the U.S. economy, and small business technology trends. The Petitioner claims that these articles support the national importance of his proposed endeavor. The determination of national importance does not focus on the importance of one's field in general, the value of small businesses to economic growth, or government initiatives aimed at improving the U.S. economy, but "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, none of the articles mention the Petitioner or his company, or otherwise speak to the potential prospective impact of his proposed endeavor.

In addition, the Petitioner presented letters of support from H-C-M-, J-E-S-B-, F-B-, F-E-E-C-, C-A-Q-M-, V-N-M-, A-M-C-, V-E-C-E, G-I-F-S-, H-F-M-, D-P-T-, A-V-M-, and P-H-F-P- discussing his financial and accounting capabilities and experience. He also provided letters from J-B-, O-L-P-A-,

A-I-, and Y-A-N-J- reflecting interest in his consulting services. The Petitioner's skills, knowledge, and prior work in his field, as well as interest from potential customers, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated the Petitioner had not demonstrated that his undertaking "extends beyond his future clients or employers to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance." The Director also concluded the Petitioner had not shown that his proposed endeavor stands "to provide substantial economic benefits."

In his appeal brief, the Petitioner argues that the Director did not properly consider the aforementioned industry articles and reports he provided relating to his proposed endeavor's substantial merit and national importance. The Director's decision, however, stated that "[t]he industry reports and articles [the Petitioner] submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to his proposed endeavor." Again, the issue here is not the national importance of the field, industry, or profession in which the individual will work; rather we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

The Petitioner contends that his "proposed endeavor will benefit the U.S. small and medium-sized enterprises' productivity and efficiency by organizing technological solutions and developing strategic planning projects and therefore contributing to the U.S. economy." He claims that "[b]y enabling small businesses to access global markets more effectively, [the Petitioner's] efforts will contribute to economic growth and job creation in the U.S., enhancing the country's export strength and economic resilience." The Petitioner further states that [h]is efforts to enhance business models, particularly in sectors affected by the pandemic, will aid in reducing unemployment and fostering economic resilience."

The Petitioner, however, has not provided evidence demonstrating that his proposed business consulting activities would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of his proposed endeavor stands to offer broader implications in his field or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States.

Additionally, the Petitioner cites to the information he submitted relating to the American Rescue Plan, U.S. freight system, financial efficiency, small business closure rates, and small businesses' contribution to economic output and job creation, but these articles do not mention the Petitioner or his company, or otherwise speak to the potential prospective impact of his specific proposed endeavor. While the Petitioner asserts that his undertaking "impacts directly a matter that a government entity has described as having national importance or is the subject of national initiatives," he has not demonstrated how operating a business consulting company as contemplated by his proposed endeavor rises to a level of national importance. The Petitioner's personal statements and business

plan do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in his industry or substantial positive economic effects for our nation that are indicative of its national importance.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. While the Petitioner's statements reflect his intention to provide consulting services to his company's future clients, 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 conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field, the business consulting industry, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown 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. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in the region where his company will operate or in other parts of the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his endeavor stands to generate jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers any specific region or the United States a substantial economic benefit through employment levels or business activity.

The Petitioner has not established that his proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance.

B. The Remaining *Dhanasar* Prongs

Because the documentation in 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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.