U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35319382

Date: DEC. 4, 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. Although the Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree, the Director also concluded that the record did not establish that a waiver of the job offer requirement, 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 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 (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

- 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.

The first 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. See *id.* at 888-91 for elaboration on these three prongs.

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 of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner described the endeavor as a plan to "open[] a subsidiary of my foreign company . . . in the U.S." The Petitioner elaborated that his company "specialize[s] in offering the best and safest cleaning solutions, both in the industrial and residential segments, as well as the service sector." He indicated that his company produces "cleaning chemical products such as detergents and disinfectants, . . . skin care moisturizers, serums, and hair shampoo," which "meet the demands of different sectors such as hotels, restaurants, offices, health clinics, gyms, marinas and ports, automotive aesthetics, transporters, warehouses, and in various industrial sectors."

The Petitioner stated that he plans to operate the U.S. subsidiary "in an industrial area" near the [redacted] Florida, airport "due to the variety of low cost warehouse offerings." The Petitioner indicated that his subsidiary would employ himself and another individual for a total of two employees in the first year of operations, with the respective titles of chief executive officer and marketing manager. The Petitioner elaborated that the subsidiary's staff would increase to nine employees in the fifth year of operation, in one of each of the following position titles: chief executive officer, operations manager, sales manager, marketing manager, sales representative, marketing analyst, warehouse assistant, logistics analyst, and account manager.

We note, however, that the business plan the Petitioner submitted at the time he filed the Form I-140, Immigrant Petition for Alien Workers does not appear to correspond to the occupation described on the Form I-140. More specifically, in Part 6. Basic Information About the Proposed Employment on the Form I-140, the Petitioner stated that his annual wage would be $150,000. However, the business plan in the record indicates that both of the first-year employees' wages would be $30,000 for the first year of operation, $45,000 for the second year of operation, $70,000 for the third year of operation,

in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

$90,000 for the fourth year of operation, and $100,000 for the fifth year of operation. The business plan does not indicate that any of the workers would be paid an annual wage of $150,000 for any of the years of operations, directly conflicting with the Petitioner's statement on the Form I-140 that the annual wage for his self-employed position would be $150,000. Moreover, the Petitioner described his position in Part 6 of the Form I-140 as being among those in the Standard Occupational Classification (SOC) Code 11-2021, which corresponds to marketing managers, not chief executive officers. *Compare* O*NET OnLine Summary Report for "11-2021.00 – Marketing Managers," https://www.onetonline.org/link/summary/11-2021.00, *with* O*NET OnLine Summary Report for "11-1011.00 – Chief Executives," https://www.onetonline.org/link/summary/11-1011.00. However, the Petitioner described his duties in the business plan he submitted at the time he filed the Form I-140 as a "managerial role in running the operations of this company," which appear to correspond to a chief executive officer role, not a marketing manager role as he indicated on the Form I-140.[2]

Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The inconsistent information in the Petitioner's business plan submitted at the time the Petitioner filed the Form I-140, compared to the information he provided on the Form I-140, regarding what his position duties would entail and the annual wages he would receive cast doubt on whether the business plan corresponds to the position—and, thus, to the proposed endeavor—described on the Form I-140. Therefore, the reliability and sufficiency of the Petitioner's descriptions of the business plan specifically, and the record in general, is diminished. *See id.*

The Petitioner also provided information regarding his qualifications, publications providing generalized information regarding business and economics, and an opinion letter.

The Director determined the Petitioner "submitted sufficient evidence to demonstrate that [his] proposed endeavor has substantial merit," as required in part by the first *Dhanasar* prong. *See id.* at 889-90. The Director also acknowledged that the record contains information regarding the Petitioner's qualifications, the Petitioner's written plans for future activities, "industry reports and articles" providing generalized information regarding business and economics, and an opinion letter. However, the Director observed that "the [P]etitioner has not established that the proposed work has implications beyond adding to the pool of knowledge in the field." The Director noted that "none of [the] articles or reports in the record discuss the Petitioner's specific proposed endeavor or how it will have an impact so substantial as to rise to the level of national importance." The Director also observed that the record does not demonstrate whether "the proposed endeavor has significant potential to offer substantial positive economic effects." Therefore, the Director concluded the record does not establish the proposed endeavor will have national importance, as required in part by the first *Dhanasar* prong, which is dispositive. *See id.* The Director further determined that the record does not satisfy the third

[2] We acknowledge that, in response to the Director's request for evidence (RFE), the Petitioner submitted an additional statement describing the proposed endeavor, in which he stated that his position title would be "the Business Development Director of the company," which is consistent with information on the Form I-140. However, neither of the two first-year position titles—nor any of the nine position titles as of the subsidiary's fifth year of operation—in the business plan submitted at the time the Petitioner filed the Form I-140 include "Business Development Director." Thus, the RFE response business plan, and its references to the Petitioner working as the subsidiary's "Business Development Director" are inconsistent with the business plan he submitted at the time he filed the Form I-140.

Dhanasar prong, although the Director did not specifically state whether the record satisfies the second *Dhanasar* prong. *See id.* at 888-91.

On appeal, the Petitioner reasserts, in relevant part, that the record establishes the proposed endeavor has national importance based on: "descriptions of the proposed endeavor," "[l]etters of support providing specific examples of [the Petitioner's] past work that corroborates projects of his planned activities in the U.S.," and "[i]ndependent documentary evidence that supports his statements." Although the Petitioner does not specify on appeal the particular "[i]ndependent documentary evidence that supports his statements," he also describes the publications in the record providing generalized information regarding business and economics as "independent publications" that "serve as objective (quantifiable, independently verifiable information) evidence corroborating [the Petitioner's] statements."

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that, although the Petitioner asserts on appeal that his descriptions of the proposed endeavor satisfy the first *Dhanasar* prong, his statements in the record describing the proposed endeavor in general, and his position more specifically, do not appear to correspond to the Form I-140 and directly conflict with information provided on the Form I-140, for the reasons explained above. Because of the doubt cast on the reliability and sufficiency of information in the record, the Petitioner's statements in the record describing the proposed endeavor specifically, and the record in general, bear minimal probative value. *See Matter of Ho*, 19 I&N Dec. at 591.

Next, the "[l]etters of support providing specific examples of [the Petitioner's] past work" are material to the second *Dhanasar* prong, whether an individual is well positioned to advance a proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91. However, the letters providing information regarding the Petitioner's "past work," as he describes them, do not address the specific endeavor he proposes to undertake and how its potential prospective impact may have national importance, as required in relevant part by the first *Dhanasar* prong. *See id.* at 889-90. For example, the letters do not elaborate on how the specific endeavor the Petitioner proposes to undertake may have national or even global implications within the fields of cleaning chemical product wholesale and retail, or any other field, such as those resulting from certain improved manufacturing processes or medical advances. *See id.* As another example, the letters do not address how the specific endeavor the Petitioner proposes to undertake may have significant potential to employ U.S. workers or other substantial positive economic effects, particularly in an economically depressed area. *See id.*

In turn, the publications in the record providing generalized information regarding business and economics do not establish how the specific endeavor the Petitioner proposes to undertake may have

national importance. As the Petitioner states on appeal, "[t]he industry reports and articles [in the record that he references on appeal] do not discuss the [P]etitioner or his proposed endeavor" and how its potential prospective impact may have the type of broader implications indicative of national importance. For example, similar to the letters noted above, the generalized information does not address how the specific endeavor the Petitioner proposes to undertake may have national or even global implications within the fields of cleaning chemical product wholesale and retail, or any other field, such as those resulting from certain improved manufacturing processes or medical advances. *See id.* The publications also do not address how the specific endeavor the Petitioner proposes to undertake may have significant potential to employ U.S. workers, or other substantial positive economic effects, particularly in an economically depressed area. *See id.*

Even if the Petitioner's statements specifically, and the record in general, could be considered reliable and sufficient—which they cannot for the reasons addressed above—the record would not establish that the proposed endeavor has national importance. *See Matter of Ho*, 19 I&N Dec. at 591, *supra*. As described, the proposed endeavor appears to have the potential to benefit the Petitioner, as the owner of the company with the planned U.S. subsidiary; the Petitioner's company; and the company's business partners, customers, and clients. However, the record does not establish how the potential prospective impact of the specific endeavor the Petitioner proposes to undertake—retail and wholesale of cleaning chemical products—may have the type of broader implications that may indicate national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91. For example, neither the Petitioner's written business plans nor the remainder of the record establish how the Petitioner's distribution of cleaning chemical products—among all other economic activity of cleaning chemical product distributors, whether within Florida or throughout the United States—may have national or even global implications within the fields of cleaning chemical product wholesale or retail, or any other field. *See id.* Relatedly, the record does not establish how the Petitioner's endeavor to distribute cleaning chemical products—among all other distributors of cleaning chemical products—may be akin to improved manufacturing processes or medical advances. *See id.*

In turn, although the Petitioner's business plan indicates that he intends to employ himself and eight other individuals within the subsidiary's first five years of operation, the record does not establish how employing one chief executive officer, one operations manager, one sales manager, one marketing manager, one sales representative, one marketing analyst, one warehouse assistant, one logistics analyst, and one account manager in the [redacted] Florida, metropolitan area may be considered significant potential to employ U.S. workers, among the extant employment demographics in that area. Given the extent to which the wages described in the Petitioner's business plans in the record do not appear to correspond to the Petitioner's self-employed wages described on the Form I-140, for any of the years of operation, the information in the record regarding the proposed endeavor's potential economic activity particularly bears minimal probative value. *See Matter of Ho*, 19 I&N Dec. at 591, *supra*. Therefore, the record also does not establish how the proposed endeavor may have substantial positive economic effects. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.