U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34063294

Date: DEC. 05, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a financial manager and entrepreneur, 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 Nebraska Service Center denied the petition, concluding the record did not establish 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 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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. Our precedent decision in *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:

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

- 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.

II. ADVANCED DEGREE

The Petitioner asserts that he qualifies for EB-2 classification as an advanced degree professional. In support of this claim, he provided copies of his transcript and foreign equivalent of a U.S. bachelor's degree in business administration from the [redacted] in Mongolia. He also provided copies of his transcript and U.S. master's degree in business administration from the [redacted]. While the evidence appears to support a conclusion that the Petitioner holds the foreign equivalent of a U.S. bachelor's degree, after reviewing the record, we question whether it, in fact, contains evidence that the Petitioner possesses either an advanced degree from an *accredited* college or university, or has five years of progressive post-baccalaureate experience in the specialty.[2]

However, as the resolution of the issues pertaining to the Petitioner's eligibility for a waiver of the job offer requirement, and thus of a labor certification, under the *Dhanasar* analytical framework is dispositive of this appeal, we will reserve consideration of the Petitioner's eligibility for the requested EB-2 category.[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule 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 D-L-S-*, 28 I&N Dec. 568, 577 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. NATIONAL INTEREST WAIVER

The Petitioner proposes to work as a financial manager and to start his own company, [redacted], which will specialize in the sale of mining equipment and parts throughout the United States and abroad. Specifically, his business plan states that his company's objective is to "act as a bridge for the

[2] [redacted] does not appear to be accredited by an institutional accreditation organization recognized by the U.S. Department of Education. The Database of Accredited Postsecondary Institutions and Programs reports that the Accrediting Council for Independent Colleges and Schools terminated the [redacted] accreditation on [redacted] 2008. *See* Office of Postsecondary Education, U.S. Dep't of Educ., *Database of Accredited Postsecondary Institutions and Programs*, https://ope.ed.gov/dapip/#/institution-profile[redacted] The Petitioner's transcript reflects that he attended [redacted] between 2009 and 2011, after the school's accreditation was terminated. Thus, the documentation does not appear to establish that he possesses an advanced degree from an accredited college or university. Likewise, the Petitioner's Form ETA 750B, Statement of Qualifications of Alien, reflects that he has worked for [redacted] as a virtual senior accountant on a part-time basis for 20 hours per week since May 2016. Prior to that, his resume reflects he worked as an assistant accountant for [redacted] from September 2002 to March 2003. Unrelated to the specialty, the Petitioner also reportedly worked as a salesman for a carpet company, an assistant manager for a pizza store, an uber driver, and an Amazon flex driver. Based on this record, the evidence does not appear to show that he acquired five years of full-time, progressive experience in the field following the completion of his foreign bachelor's degree in 2002 to qualify as an advanced degree professional.

[3] That said, the Petitioner should be prepared to address the issue, including the observations we have made here, in any future NIW filings.

export and import of heavy machinery, equipment and parts for the mining and construction field to Mongolia and other Asian countries," as well as to the local market and neighboring countries such as Canada. Through his company, the Petitioner intends to serve small businesses in the mining sector and aid them in expanding their businesses across the United States. He also plans to help companies find additional sales opportunities and offer a wider variety of products and services. While the Petitioner's company will specialize in selling mining equipment and parts, the business plan states that it "will also be inserted in other industries and related markets that present opportunities for the success of the venture in the United States."

The Director concluded that the Petitioner satisfied the first and third *Dhanasar* prongs, but did not meet the second prong requiring him to show he was well positioned to advance his proposed endeavor. Upon de novo review of the record, we agree that the Petitioner does not satisfy this prong and so has not established eligibility for a national interest waiver. However, we also conclude that the Petitioner has not sufficiently demonstrated his proposed endeavor's national importance under the first prong and will, therefore, withdraw the Director's determination on this issue. While we may not discuss every document submitted, we have reviewed and considered each one.

A. Substantial Merit and National Importance

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. *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and 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 this case, the Petitioner has not offered sufficient evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In particular, he has not described how his work as a financial manager and entrepreneur operating an import and export business will have a broader impact beyond the individual clients he will serve. While he claims that his endeavor will produce "significant national benefits" by contributing tax revenue, generating jobs, and ultimately helping to increase the flow of money in the U.S. on a national level, which will, in turn, contribute to the U.S. gross domestic product, he has not offered sufficient, specific evidence demonstrating any significant U.S. economic impact directly attributable to his future work. For example, according to his business plan, the Petitioner expects to employ 6 individuals with a total revenue of $668,902.50 in the first year of operation, increasing to 33 employees with revenue of $2,408,962.50 by the fifth year of operation. He also expects to create 165 indirect jobs and pay $367,614.28 in taxes by the fifth year. However, the business plan does not adequately support these projections of job and revenue creation and does not explain in detail how its forecasts were calculated or how its projections will be realized.

Moreover, even if the projections were more than conjecture, we would still conclude that the Petitioner had not adequately demonstrated how his endeavor would have a significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. For instance, he has not detailed how the claimed creation of 33 direct jobs and 165 indirect jobs by year five demonstrates a significant potential to employ U.S. workers or otherwise shows how his endeavor's potential economic impacts would result in any demonstrable effect on the regional or national economy. The Petitioner also has not, for example, established that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth in [redacted] Virginia, where he plans to headquarter his company, let alone in the United States generally. Likewise, while the Petitioner forecasts $2,408,962.50 of revenue by year five, he has not explained or established the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.*

We further note that the business plan concedes that "[m]ost of the jobs and generation of taxes will be done indirectly, through the companies served." Putting aside our concerns related to the lack of direct potential prospective impact of the proposed endeavor, even considering this claim, the record lacks sufficient evidence, as discussed above, that these predicted gains would be substantial enough to rise to the level of national importance. The record does not support a determination that any indirect benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" under *Dhanasar*. While any increased business activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the economic activity resulting from his endeavor, including any "ripple effects" thereof, would have such broader implications that it would rise to the level of national importance.

Moreover, the Petitioner's intention to headquarter his company in a Small Business Administration (SBA) HUBZone and later expand to other HUBZones across the nation is not persuasive. He asserts that his business will contribute to the development of underserved areas and underdeveloped communities with the goal of generating jobs for U.S. workers and "offering them opportunities to build up and expand their professional possibilities within the finance industry." He contends this will ultimately "improve wages and working conditions for American citizens, and also boost investment and economic development throughout such local communities."

The HUBZone program's goal is to promote business growth in underutilized business zones with the goal of awarding 3% of federal contract dollars to companies that are HUBZone certified. Joining the HUBZone program makes a business eligible to compete for certain federal contracts in the "set-aside" category. There are several required qualifications to participate in the program, but the most dispositive requirement for purposes of our analysis is that the business seeking to participate in the HUBZone program must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. While it is unknown and the record is silent about what, if any, federal programs exist in the "set-aside" category for endeavors like the one the Petitioner proposes, the record is clear that the Petitioner's proposed endeavor would be wholly owned and controlled by the Petitioner and that the Petitioner is not a U.S. citizen, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian

tribe. So, the fact that the Petitioner' proposed endeavor may be in a HUBZone is irrelevant to whether the Petitioner's endeavor rises to a level of national importance.

The Petitioner also submitted various industry reports and articles, including documents addressing the financial management and business fields generally, labor shortages, small businesses, and the importance of immigrant entrepreneurs. The articles and reports, however, provide only general background information on these subjects and do not specifically relate to or discuss the Petitioner's proposed endeavor, including how his specific endeavor might impact these areas more broadly, such that it rises to the level of national importance. Moreover, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. While we acknowledge the overall value of these areas and professionals generally, simply working in an important industry is insufficient to establish the proposed endeavor's national importance. The Petitioner must still demonstrate the endeavor's potential prospective impact in that area of national importance, which he has not done.

We have also reviewed the expert opinion letter authored by Dr. [redacted] an associate professor at [redacted] as well as other support letters written by the Petitioner's former work colleagues. However, they provide little probative information to establish the national importance of the Petitioner's proposed endeavor. While Dr. [redacted] broadly references the Petitioner's endeavor and comments on the importance of entrepreneurs, small businesses, and the role of immigrant entrepreneurs generally, he does not elaborate in detail on the Petitioner's future work and why it, in particular, would be nationally important. For instance, while he speculates that the Petitioner's proposed endeavor has a significant potential to employ U.S. workers and have other substantial positive economic effects due to the forecasted growth of the construction and mining industry, he does not offer any persuasive detail regarding how the Petitioner's work, specifically, would result in these claimed economic benefits or other broader impacts beyond the clients he will serve.

Similarly, while the support letters praise the Petitioner's personal attributes, professional skills, and achievements, they do not mention or discuss the Petitioner's endeavor or specific impact thereof, including any potential broader implications of his work. Furthermore, to the extent that these letters and the Petitioner rely on his experience, skills, accomplishments, and personal ability to attract foreign investors, these are considerations under *Dhanasar's* second prong. When conducting an analysis under *Dhanasar's* first prong, we focus on the proposed endeavor itself. Accordingly, the expert opinion and other support letters are of little probative value in evaluating the endeavor's national importance.

Because the Petitioner has not established his proposed endeavor's national importance as required by *Dhanasar's* first prong, we will withdraw the Director's determination.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a

model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

In concluding the Petitioner did not demonstrate he is well positioned to advance the proposed endeavor, the Director found that the Petitioner failed to provide the requested documentation reflecting his plans to financially support his proposed endeavor, including corroboration of his alleged $1,000,000 initial investment.[4] On appeal, the Petitioner does not specifically address the Director's analysis or the particular evidentiary deficiencies identified in the Director's decision. As the Petitioner has not meaningfully contested the Director's grounds for denial under this prong, he has not overcome them.[5]

IV. CONCLUSION

Because the Petitioner did not establish his proposed endeavor's national importance and that he is well positioned to advance the proposed endeavor, he has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under *Dhanasar's* third prong, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. at 25 ("As a general rule 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 D-L-S-*, 28 I&N Dec. at 577 n.10 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.

[4] While the Petitioner points to the success of his family's company in Mongolia, he does corroborate his claim with any evidence .

[5] The Petitioner claims he is "undeniably" well positioned to advance the proposed endeavor based on his education, skills, and experience as a financial manager. He also generally contends that the Director imposed "novel substantive and evidentiary requirements," applied a stricter standard of proof than that of a preponderance of the evidence, and did not give "due regard" to the evidence submitted. However, as the Petitioner has not challenged, much less overcome, the Director's specific findings, we do not reach these additional arguments.