U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 35121873

Date: DEC. 06, 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 either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 record did not establish the Petitioner's eligibility for the requested national interest waiver. 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. 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.

*Id.*

## II. ANALYSIS

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

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.

The record reflects the Petitioner intends to serve as the chief executive officer of his company, [redacted] with the goal of elevating the performance of athletes and coaches to foster the advancement in sports. Through his company, the Petitioner intends to establish performance pathways for athletes of all ages, as well as coaches in order to ensure progression in sports training. According to his business plan, the company intends to provide services related to performance enhancement programs, research and development services, sports problem-solving services, sport program development, and community engagement and outreach. As part of the company's comprehensive performance enhancement programs, the Petitioner asserts that his company will offer athletes cutting-edge training methods, injury prevention techniques, and nutritional guidance to ensure athletes remain competitive. The company will also target corporate clients interested in developing employee wellness through sports and physical activities.

In support of the endeavor, the record contains a five-year business plan, the Petitioner's personal statement affirming their intent to execute the business plan, letters of recommendation from the Petitioner's former clients and others in his field attesting to his dedication to sports training and recruiting, and letters of interest from prospective investors. The Petitioner also provided articles, industry reports, and various government publications discussing the impact of the sports industry, the economic benefits resulting from increased sport activity and a healthier population, and the importance of small businesses to the U.S. economy.[2]

[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).

[2] We do not discuss each piece of evidence contained in the record individually, but we have reviewed and considered each one.

Upon review of the record, the Director concluded that, while the Petitioner's endeavor was substantially meritorious, the evidence did not demonstrate the Petitioner's proposed endeavor has national importance. Specifically, the Director determined that the Petitioner had not shown that his company would offer benefits more broadly at a level commensurate with national importance, beyond the direct benefits provided to its prospective customers. Moreover, the Director determined that he did not demonstrate there was a significant potential to employ U.S. workers or otherwise generate substantial positive economic effects contemplated in *Dhanasar*.

On appeal, the Petitioner generally claims that the Director did not apply the correct burden of proof and failed to properly consider the evidence on record establishing both his vast experience in the field as well as the impact of his proposed business endeavor. However, the Petitioner does not point to specific examples of how the Director erred in their analysis of the evidence. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding.[3] By presenting only general disagreement with the Director's decision, without identifying the specific aspects of the denial he considers to be incorrect, the Petitioner has failed to sufficiently identify the basis for his appeal.[4] Instead, he relies on arguments previously put forth and addressed by the Director, and maintains that the evidence was sufficient to demonstrate the national importance of his endeavor.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review of the record, we conclude the Petitioner has not established, by a preponderance of the evidence, that the proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

On appeal, the Petitioner contends that his company will revolutionize the sports education sector by offering a comprehensive and integrated approach to athlete development. Additionally, he asserts that the company will focus on incorporating academic education in its offering, noting that "[t]he lack of emphasis on academic and personal development for athletes has historically led to higher rates of academic failure." Yet, the Petitioner does not elaborate on what specific academic services he will provide in his appellate brief, nor is this addressed in his business plan. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Additionally, the Petitioner relies on the importance of the sports industry to establish the national importance of his endeavor, stating that the company is aligned with national priorities focused on the well-being of youth and fostering a healthier society. While the record reflects the Petitioner's claim that his endeavor will ultimately lead to healthier communities, and in turn result in societal improvements, he has not explained or provided evidence to show how his company would impact

[3] *See* 8 C.F.R. § 103.3(a)(1)(v).
[4] *Matter of Valencia*, 19 I&N Dec. 354, 354–55 (BIA 1986).

these broad national initiatives on broader level, beyond the immediate benefit to his prospective clients.

Here, while the articles in the record pertaining to the sports industry and the benefits of healthier communities establish the substantial merit of the Petitioner's proposed endeavor, they do not establish its national importance. 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.

The Petitioner also claims that his company will generate substantial economic benefits, including projecting $4.2 million in revenue by its fifth year of operation, and in that same time generating nearly $1.7 million in tax payments. Additionally, the Petitioner asserts that by the fifth year of operations, his company will employ 25 employees, resulting in the creation of up to 80 indirect jobs. Notably, however, while the Petitioner identified the various positions each employee will fill, including hiring 3 research and development managers, the business plan does not provide sufficient explanation for the basis of these employment projections. And, beyond providing an anticipated cost of the services offered, the business plan also does not explain the basis for the financial projections. But even if the endeavor's revenue and job creation projections were sufficiently explained and supported, they do not establish that his company would operate on a scale rising to the level of national importance contemplated in *Dhanasar*, nor has the Petitioner explained how his proposed employment numbers and revenue would impact the company's area of intended operations. Accordingly, the Petitioner has not established that his endeavor has significant potential to employ U.S. workers or otherwise result in substantial economic effects contemplated in *Dhanasar*.

And, while the Petitioner claims in the record that his company will "provide research and development services focused on improving the performance of coaches and athletes," adding that "[t]hrough applied research activities, the company will identify innovative techniques, training methodologies, and performance metrics to optimize athletic performance," he does not elaborate on what specific techniques or methodologies he intends to research and develop. The Petitioner has not explained, for instance, how any techniques and training methodologies he intends to develop compare to techniques that are already widely available in the market to determine if his company's offerings will indeed be analogous to the "improved manufacturing processes or medical advances" contemplated in *Dhanasar*. *Dhanasar* at 889. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

The record does not show that the benefits resulting from the Petitioner's proposed business endeavor would have implications beyond the limited benefits to any prospective clients. This is akin to how the benefit of someone's teaching is generally only directly beneficial to the students being taught and

not the wider population. In *Dhanasar*, we discussed how teaching would not impact the field of education broadly in a manner which rises to national importance. *Id.* at 893. By extension, activities which only benefit the Petitioner's prospective clients would not rise to a level of national importance.

Additionally, the testimonial evidence in the record, including the letters of recommendation, also provide little probative value in establishing the national importance of the Petitioner's endeavor as they primarily focus on the Petitioner's past experience without addressing the prospective impact of his endeavor. We recognize that the Petitioner has had a successful career, but a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar* at 890. The issue here is whether the Petitioner has demonstrated the national importance of his proposed endeavor. And while some of the recommendation letters address the prospective benefits of his proposed company, they primarily relate to the benefits to the Petitioner's prospective clients instead of the broader industry. For example, in their letter, D-F- states that the Petitioner could help U.S. athletes win competitions, but does not elaborate on how this would result in broader implications at a level commensurate with national importance, rather than benefiting only the Petitioner's clients.

For the reasons discussed, the Petitioner has not demonstrated that his proposed endeavor would be of national importance, and he therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework.

## 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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs as well as a determination as to whether the Petitioner has met the requirements of EB-2 classification. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

**ORDER:** The appeal is dismissed.