U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34868765

Date: DEC. 09, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a customs broker and chief executive officer, seeks employment-based second preference (EB-2) immigrant classification as an as an individual of exceptional ability as well as a national interest waiver of the job offer requirement attached to this classification. 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 the Petitioner did not establish eligibility as an individual of exceptional ability or for a national interest waiver. The matter is now before us on appeal. 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

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,[3] 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. at 889.

II. ANALYSIS

A. EB-2 Visa Classification

The Director determined that the Petitioner does not qualify as an individual of exceptional ability. Since the evidence in the record does not establish by a preponderance of the evidence that the Petitioner is eligible for, or otherwise merits, a national interest waiver as a matter of discretion, we will reserve the issue of whether he qualifies for EB-2 classification as an individual of exceptional ability for future consideration should the need arise.[4]

B. 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 and its "potential prospective impact." Id. at 889. 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. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual.

The record reflects that the Petitioner's proposed endeavor has substantial merit as it falls within the above-mentioned range of areas of substantial merit. Therefore, we will first identify the Petitioner's

[3] 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).

[4] See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("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 L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

endeavor as shown in the record and then evaluate the Petitioner's evidence in support of the endeavor's national importance.

The Petitioner asserts that he is the chief executive officer of aviation and customs brokerage company and his proposed endeavor is to "start a company, [redacted] specializing in customs clearance in import and export, aircraft import and export, freight forwarding and logistics, and customs audit." He further asserts that [redacted] "will provide comprehensive consulting services for the import and export of aircraft parts and components, as well as aircraft and helicopters. With a focus on ensuring compliance with tax and customs regulations and meeting delivery deadlines" and "offer consulting services in freight forwarding and logistics aimed at reducing global costs, dealing with dangerous cargo and solving oversized shipments." He contends that "[b]y facilitating the importation of new models of aircraft and aviation components, he contributes to the country's aviation sector's growth and innovation. This directly impacts technology transfer and the advancement of the aviation industry, which is crucial for the U.S.' technological development." In addition, he states that "the importation and exportation of aircraft components require a deep understanding of aerospace engineering and manufacturing processes. [His] work contributes to the flow of aerospace materials, components, and systems, thereby supporting the growth of STEM-related industries," and "[his] expertise in international trade of aircraft components and aircraft aligns with STEM advancements by promoting technology transfer, enhancing engineering, and manufacturing processes, and fostering global collaboration." The Petitioner's business plan indicates that [redacted] "will generate a total of 17 direct jobs, being responsible for the opening of 47 indirect jobs" and "generate a final demand impact in output equivalent to $2,839,447 in Year 5, as its total revenues will reach $1,625,607."

On appeal, the Petitioner asserts that the Director "erred by failing to address the evidence provided, both initially with the I-140 petition and after with the RFE response, to conclude that the petitioner's proposed endeavor holds national importance; and that on balance it would be beneficial to the United States to waive the requirement of a job offer and thus of a labor certification."

Here, the Petitioner relies primarily on the importance of air transport, customs clearance, and supply chains to the U.S. economy. However, this misapplies the Dhanasar framework. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Dhanasar, 26 I&N Dec. at 889. In Dhanasar, 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. A local physical therapy business and a shortage of physical therapists in the United States does not render the proposed endeavor nationally important under the Dhanasar framework.

The Petitioner's business plan provides a generalized description of the company's marketing and growth strategy and projected sales and claims that "[b]y ensuring the efficient movement of aviation-related goods, [the Petitioner] facilitates international trade within the aviation industry, ultimately promoting economic growth and competitiveness both domestically and globally." While the Petitioner contends that his endeavor will "reduce trade barriers, enabling market liberalization, and facilitating the seamless flow of aviation goods across borders," and "help the U.S. build stronger ties with other countries, such as Brazil," these claims are not supported by relevant or probative evidence,

details showing their basis, or an explanation of how they will be realized, nor do they demonstrate a significant potential to either employ U.S. workers or to substantially impact the national economy or the economy of the [redacted] Florida region, the intended location of his company. Generalized conclusory statements that do not identify a specific impact to the field have little probative value.[5] Without sufficient information or evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that 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" contemplated by Dhanasar. Id. Further, the Petitioner has not demonstrated that [redacted] would benefit an economically depressed area. The record also does not indicate by a preponderance of the evidence – that it is more likely than not – that the Petitioner's endeavor will "enhance[e] the accuracy and efficiency of air cargo movements," "guarantee the clearance of crucial goods, reducing potential difficulties in the supply chain during times of crisis," or "create a positive ripple effect that will benefit not only the aviation industry but also broader society by ensuring the efficient movement of goods and resources that are vital to Americans welfare." Broad statements and projections regarding the potential growth of the Petitioner's business – based upon his experience as a licensed customs broker in Brazil and the growth and importance of customs clearance and supply chains to the U.S. economy – do not demonstrate the prospective impact directly attributable to his proposed endeavor or establish how his company will impact the industry beyond his customers and the operations of his business. In the end, the economic benefits that the Petitioner claims will result from his endeavor depend on numerous factors and the Petitioner does not offer a sufficiently direct evidentiary tie between his proposed endeavor and the claimed economic results.

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.

ORDER: The appeal is dismissed.

[5] *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).