U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34547094

Date: DEC. 11, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an 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 that 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.

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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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 Petitioner is the current founder and president of [redacted] a fitness company. The Petitioner endeavors to grow his brand and expand his business.

In the denial decision, the Director determined the Petitioner qualifies for the underlying EB-2 visa classification as an advanced degree professional. However, the Director found the Petitioner did not establish eligibility for a national interest waiver as he did not demonstrate the substantial merit and national importance of the proposed endeavor or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification.

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. 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.

On appeal, the Petitioner asserts the Director erred in determining the proposed endeavor does not have substantial merit or national importance. The Petitioner claims the Director's denial was based on misinterpretation of the evidence submitted and an incorrect application of the *Dhanasar* legal standards. We find the endeavor has substantial merit but concur with the Director that the Petitioner has not demonstrated it rises to the level of national importance.

The Petitioner asserts that since [redacted] is focused on expanding and providing exercise training plans, his endeavor aligns with national health priorities. The Petitioner indicates he has established the broader impact of the endeavor through the submission of expert opinion and support letters, client testimonials, and his business plan. The evidence of record supports the Petitioner's claim that he endeavors to expand his gym beyond his current client roster, while focusing on attracting clients over 40 years of age. The letters of support attest to the Petitioner's acumen as a fitness trainer and businessperson. However, as noted by the Director, while we acknowledge the importance of the field of health and exercise, the importance of the proposed endeavor is not evaluated by the importance of the profession in which he proposes to engage, but rather the specific potential prospective impact of the specific endeavor. *Dhanasar* at 889-890. The purpose of the national interest waiver is not to ensure

a petitioner's employment in industries that may have national significance. Rather, anyone seeking a waiver must show that the specific endeavor they propose to undertake has national importance. *Id.* Therefore, the general significance or potential impact of the fitness and health industries in which [redacted] operates does not specifically inform the importance of the Petitioner's own proposed endeavor to expand his business. Here, the Petitioner has not demonstrated his contributions to the health and fitness field has a wider impact beyond his own business and clients, and at a level commensurate with national importance. Though the Petitioner contends his own endeavor has the potential to influence national health outcomes through widespread adoption on online platforms, training modules, and speaking engagements, the Petitioner has not shown that sharing this fitness information through these avenues has broader implications for the field. *Dhanasar* explains that STEM teaching will not necessarily impact the field of STEM teaching more broadly, in a manner which rises to the level of national importance. *See Matter of Dhanasar* at 893. Like teaching, in which the benefits generally affect the students taught, the services and training the Petitioner plans to provide is limited to benefiting his business, clients, and any viewers.

The Petitioner also claims he is impacting the field of fitness through innovation, specifically his "approach to individualized fitness programs – comprehensive fitness assessments, small group training sessions, and travel training services, sets a new standard for personalized fitness solutions." The Petitioner and the authors of letters in the record similarly assert the Petitioner's focus on the 40 years and older fitness sector has the "potential to redefine fitness industry," leading to business franchising and "significant public health improvements." However, the Petitioner addresses the Director's finding that the "record does not show how [the Petitioner's] techniques, methodologies, or methods are sufficiently innovative or distinct from those in other similar businesses" only insofar as the Petitioner reiterates that his approach is "innovative" and differs "significant from generic, one-size-fits-all approaches." But the Petitioner does not explain how his "comprehensive fitness assessments, small group training sessions, and travel training services" differ from similar businesses. Overall, we concur with the Director that the Petitioner has not sufficiently established particular innovation in the services he offers to his clients, the extent to which his endeavor is distinguishable from others in the field, and how these innovations would have national implications in the field of health and fitness.

The Petitioner asserts his endeavor has substantial potential for economic impact, including significant contributions to gross domestic product, tax revenues, and employment levels. The Petitioner contends his business has shown consistent growth and profitability. On appeal, the Petitioner asserts he provided projections of economic growth and currently employs "10 U.S. workers and plans to expand to 15 workers by the fall." The Petitioner asserts the Director erred in failing to define the desired level of job creation that is considered significant. However, it is the Petitioner's burden to demonstrate eligibility by a preponderance of the evidence and the Director's decision to deny the petition is discretionary in nature. Here, the Petitioner has provided profit and employment figures for the business he plans to expand, with similar projected figures. However, aside from asserting the state of Illinois has the fourth highest employment rate in the United States, the Petitioner has not submitted documentation demonstrating these projections result in benefits to the regional or national economy to the level of "substantial positive economic effects," contemplated by *Dhanasar*. *Id* at 890.

B. Additional *Dhanasar* Prongs

As our finding on this issue is dispositive of the Petitioner's appeal, we decline to reach and reserve the Petitioner's arguments relating to the Director's adverse determination of his eligibility under the additional prong of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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 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 the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.