U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35554845

Date: DEC. 11, 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 EB-2 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We rejected the Petitioner's appeal as untimely filed and dismissed a subsequent motion. Upon review, we determined the reject notice was issued in error. We reopened the matter on a Service motion under 8 C.F.R. § 103.5(a)(5) and provided the Petitioner with an opportunity to submit a brief.[1]

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 demonstrates eligibility for the underlying EB-2 classification, they must then establish 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

[1] The Petitioner previously presented a brief in support of his appeal. We will consider the arguments in his appellate brief.

that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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 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 a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner indicated that he intended "to expand the company [redacted] . . . The expansion project provides for the increase in services by including the consulting, advisory, and solutions area for logistics management." He further stated:

> Since 2019,[redacted] a legal company LLC (Limited Liability Company), located in [redacted] belonging to the [redacted] State of Florida. The company is focused on the B2B (Business-to-Business) Market, serving small, medium, and large companies in e-commerce, retail (food, beverages, appliances, transport and logistics, construction industry, and technology. [redacted] offers specialized ground transportation to the U.S. market that includes distribution and pick-up services. Currently the solutions are aimed at optimizing costs and loads, for reducing distances and delivery times, that is, far beyond just moving goods.

In response to the Director's request for evidence (RFE), the Petitioner provided a statement indicating:

> I intend to continue using my experience and knowledge, acquired more than 16 years of experience and services, to expand and consolidate a consulting, advisory and solutions company for logistics management,[redacted] in the United States.
>
> . . . .
>
> [redacted] provides the U.S. market with specialized ground transportation that includes freight distribution and collection services. The solutions optimize costs and loads, reducing distances and delivery times, much more than simply moving goods.

[2] *See also 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 to be discretionary in nature).

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. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined the Petitioner's proposed endeavor has substantial merit. We agree.

The Director concluded, however, that the Petitioner did not establish the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish the potential prospective impact of his company and its services.

In addition to company formation documents and tax returns, the Petitioner's evidence included his business plan for [redacted] This business plan provides industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company will employ 5 personnel in year one, 6 in year two, 7 in year three, 8 in year four, and 9 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while his plan offers revenue projections of $570,240 in year one, $802,560 in year two, $1,056,000 in year three, $1,330,560 in year four, and $1,626,240 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.[3]

The Petitioner also submitted articles on the importance of entrepreneurship to the U.S. economy, entrepreneurship and job creation, small businesses and job growth, immigrants as contributors to economic growth, immigrant entrepreneurs' role in the small business environment, and small businesses as drivers of the U.S. economy. The Petitioner claims that these articles support the national importance of his proposed endeavor. The determination of national importance does not focus on the importance of immigrant entrepreneurship or small businesses in general, but "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, none of the articles mention the Petitioner or his company, or otherwise speak to the potential prospective impact of his specific proposed endeavor.

In addition, the Petitioner presented letters of support from L-C-P-, M-M-, A-A-, C-S-, C-A-L-C-, E-P-B-, R-A-N-, and D-P- discussing his business capabilities and experience. He also provided a letter from R-N- reflecting interest in engaging [redacted] services. The Petitioner's skills, knowledge, and prior work in his field, as well as interest from a potential customer, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national."

[3] The "gross receipts or sales" for [redacted] listed in the Petitioner's 2021 and 2022 Form 1065, U.S. Return of Partnership Income, fall well short of his revenue projections in the business plan.

Id. at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

The Petitioner also provided an "Expert Opinion Letter" from Dr. V-L-, Associate Professor of Marketing at [redacted], in support of his national interest waiver. Dr. V-L- contends that the Petitioner's proposed work "will help clients in understanding and improving their supply chains and logistics operations," but he does not identify any specific companies or entities that have been or will be serviced by [redacted] in a manner indicative of broader implications to the field or industry. Dr. V-L- further contends that the Petitioner's expansion project provides that his company plans to add five workers and therefore generate induced jobs and indirect jobs. Even with this projected job growth, the record does not indicate that the Petitioner's company would employ a substantial number of U.S. workers or otherwise have a significant economic impact as contemplated in *Dhanasar*. *See id.* at 890. The advisory opinion from Dr. V-L- does not demonstrate how the Petitioner's day-to-day management of his company's operations as contemplated by his proposed endeavor rises to a level of national importance. The letter from Dr. V-L- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in his field or substantial positive economic effects for our nation that are indicative of its national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated the Petitioner had not demonstrated that his undertaking "has broader implications in logistics management field, the logistics services industry, or the U.S. economy that rise to the level of national importance." The Director also concluded the Petitioner had not shown that his proposed endeavor stands to offer "substantial economic benefits to Florida or the U.S. economy more broadly at a level commensurate with national importance."

In his appeal brief, the Petitioner points to his experience in operations management, legal and administrative matters, entrepreneurship, and finance. The first prong of the *Dhanasar* framework focuses on the proposed endeavor; not on the Petitioner's prior work in the field, business skills, or other qualifications. The national importance of the Petitioner's proposed endeavor stands separate and apart from his education, skills, and job experience.[4]

The Petitioner contends that his proposed endeavor "will help clients in understanding and improving their supply chains and logistics operations." He argues that future "demand for supply chain management will rise" and that "industry revenue is forecast to grow" through 2027. The Petitioner further asserts that his undertaking is aimed at improving "the social and cultural fabric of the United States by increasing growth opportunities for U.S. companies." In addition, he indicates that his proposed work "will be instrumental in improving the social and cultural welfare of the local community because he will implement his expert methodologies to alleviate supply chain and logistics challenges."

The Petitioner, however, has not provided evidence demonstrating that his proposed business activities would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to

[4] *See Dhanasar* at 890.

substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of his proposed endeavor stands to offer broader implications in his field or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States.

The Petitioner also claims that his company's projected 9 direct jobs stand "to generate another 10.49 induced jobs and 18.68 indirect jobs." As for the job creation that the Petitioner asserts his proposed endeavor will offer, the record does not contain sufficient supporting evidence. The preponderance of the evidence standard requires the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. *See id.* Here, lack of supporting details and evidence detracts from the credibility and probative value of the Petitioner's claim regarding job creation and other substantial positive economic effects.

In addition, the Petitioner argues that his proposed "endeavor will add business to the U.S. market and will help small businesses in the U.S. thrive." He further asserts that his undertaking "would substantially contribute to the small business sector in the United States" and "help U.S. businesses persevere through the economic crisis."

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. While the Petitioner's statements reflect his intention to provide logistics consulting and transportation services to his company's clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field, the logistics and transportation industry, societal welfare, U.S. cultural interests, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or in other parts of the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his endeavor stands to generate direct and indirect jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers Florida or the United States a substantial economic benefit through employment levels or business activity.

The Petitioner has not established that his proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic

effects, has national or even global implications within the field, or has other broader implications indicating national importance.

B. The Remaining *Dhanasar* Prongs

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility under the second and third prongs of the *Dhanasar* framework. *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 the applicant did not otherwise meet their burden of proof).

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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.