U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34855571

Date: DEC. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a headhunter in the field of financial analysis, seeks employment-based second preference (EB-2) immigrant classification as 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 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. *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

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

- On balance, waiving the job offer requirement would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Director determined that the Petitioner had not demonstrated his eligibility for EB-2 classification.[2] The Director further concluded that the Petitioner had not shown that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The matter before us on appeal is whether the Petitioner has established the substantial merit and national importance of the proposed endeavor. We determine, upon de novo review, that the Petitioner has not.

The Petitioner's proposed endeavor, as described in the business plan submitted with his petition, is to open [redacted], a business through which he apply his expertise as a headhunter for the Brazilian insurance sector to serve as a headhunter for companies in the United States insurance and financial sectors. A second business plan provided with the Petitioner's RFE response clarifies that [redacted] will focus on companies in the finance and insurance industries in Florida and New York, acting "as a provider of high-level, customized recruitment consulting services for companies." The business plan indicates that this proposed endeavor will be "responsible for designing and implementing the overall recruiting strategy, sourcing and attracting candidates, conducting interviews, and filtering candidates for job vacancies" and will "focus on sourcing candidates for technical roles, such as actuaries, leveraging [the Petitioner]'s extensive knowledge and experience in the field of finance." The plan states that [redacted] will also offer a unique "professional monitoring" tool "encompass[ing] the entire process of integrating newly hired employees into their respective organizations."

In denying the petition, the Director concluded that the Petitioner had not demonstrated his eligibility for EB-2 classification. On appeal, the Petitioner does not contest the Director's finding that he has not established eligibility for the underlying EB-2 classification. Accordingly, we deem it waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2; *see also Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678 (11th Cir. 2014) (finding that when the appellant fails to challenge properly on appeal one ground on which the district court based its judgment, he is deemed to have abandoned any challenge of that ground.)

The Director further determined that the Petitioner had not established the substantial merit and the national importance of the proposed endeavor under the first prong of the *Dhanasar* analytical framework.[3] *Matter of Dhanasar*, 26 I&N Dec. at 889. On appeal, the Petitioner contests this conclusion and asserts that, had the Director considered the updated [redacted] business plan submitted with his RFE response, they would have reached a different conclusion.

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[2] We note that the Director's decision does not specify whether this determination was made based upon eligibility as a member of the professions with an advanced degree or as an individual of exceptional ability. We additionally note that the Petitioner indicated that he sought classification only as an individual of exceptional ability and the Director's request for evidence (RFE) advised the Petitioner that he had not provided required evidence needed to establish his eligibility as such an individual.

[3] The Director also concluded that he was well positioned to advance the proposed endeavor, and that on balance, waiving the job offer requirement would benefit the United States. The Director therefore determined that the Petitioner had not shown his eligibility for a national interest waiver as a matter of discretion.

The first prong of the *Dhanasar* framework, 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.

Regarding the substantial merit of the proposed endeavor, the Petitioner argues that this is shown through the development and opening of [redacted] in the United States. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The business plan presented with the Petitioner's RFE response, and resubmitted on appeal, references articles from Forbes Magazine and CNBC discussing challenges small businesses face in hiring workers. It further discusses the positive impact that successful recruitiment has on increasing labor productivity and therefore the U.S. economy. The record is therefore sufficient to show, by a preponderance of the evidence, that the Petitioner's proposed endeavor, as outlined in his business plan, has substantial merit. We will withdraw the Director's determination to the contrary.

The Petitioner also contends on appeal that the national importance of the proposed endeavor is demonstrated through the nationwide impact of the development of his business. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In *Dhanasar*, we further 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.

According to the [redacted] business plan, the proposed endeavor will focus on businesses located in Florida and in New York, and will employ four personnel in the first year of operation, five in the second year of operation, and six employees in the third, fourth, and fifth years of operation. The sales forecast for the proposed endeavor, as presented in the business plan, anticipates $432,000 in total sales in year one, $514,080 in year two, $622,037 in year three, $659,359 in year four, and $698, 921 in year five. The business plan anticipates that the proposed endeavor will generate a total of 13 direct and indirect jobs in Florida by its fifth year in operation. However, the record lacks sufficient evidence to support these projections. Even had the Petitioner provided such evidence, the record does not demonstrate that these benefits to the regional or national economy resulting from the Petitioner's undertaking reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* Further, in *Dhanasar* we 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.* However, the Petitioner does not offer evidence to demonstrate that the areas of Florida in which the proposed endeavor intends to operate are economically disadvantaged areas. Further, he 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 substantiate such claims. 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 industry or to generate substantial positive economic effects in the United States as a whole.

Per [redacted] business plan, the national importance of the proposed endeavor is also demonstrated by its alignment with the White House National Security Strategy, as it expands "America's economic prosperity and opportunity." While the National Security Strategy indicates the important role that the U.S. economy plays in national security, it focuses on actions taken at the Federal level to invest in various sectors such as infrastructure, the development of new technologies, and the U.S. military. This National Security Strategy does not specifically show the government's interest in the Petitioner's proposed endeavor or similar endeavors. In evaluating national importance under the first prong of the *Dhanasar* framework, we will consider evidence demonstrating how a specific proposed endeavor impacts a matter that a government entity has described as having national importance or a matter that is the subject of national initiatives. However, the creation of a proposed endeavor in an area that is adjacent to the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of that endeavor. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor in that area.

For the reasons discussed above, the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework. Because the documentation in the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning his eligibility under the second and third prongs 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

The Petitioner has not established his eligibility for the EB-2 classification. Further, the documentation in the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. 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.