U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34408425

Date: DEC. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a general manager in the hospitality field, 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 that the Petitioner is either a member of the professions holding an advanced degree or an individual of exceptional ability, and that he is eligible 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). 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. *Id.*

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. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. 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.

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,[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 record did not establish that the Petitioner is an advanced degree professional or an individual of exceptional ability. Additionally, the Director found that the Petitioner did not establish he met the national interest waiver requirements. Specifically, while the Director determined that the proposed endeavor has substantial merit, the Director did not find that the proposed endeavor has national importance, the Petitioner is well-positioned to advance the proposed endeavor, and waiving the job offer requirement would benefit the United States.

We find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. As such, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria as an advanced degree professional or an individual of exceptional ability. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

The first prong of the *Dhanasar* analytical framework requires the Petitioner to establish the proposed endeavor has both substantial merit and national importance. We agree with the Director that the record establishes the Petitioner's proposed endeavor has substantial merit. 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.

[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] *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).

With respect to his proposed endeavor, the Petitioner stated on his petition that he would "plan, direct, or coordinate the operations of tourism and hospitality organizations, overseeing multiple departments or locations. Duties and responsibilities include formulating policies, managing daily operations, and planning the use of materials and human resources." He further mentioned he would "manage projects for the greater good of the tourism industry" and "contribute to the U.S. government by collecting taxes and providing jobs for Americans indirectly through [his] expertise in managing hospitality positions." In response to a request for evidence (RFE), the Petitioner further stated his proposed endeavor focuses on "the development of new talents, such as the inclusion of apprentices (age[s] between 14 and 18), people with disabilities, and the elderly in the hotel industry."

The record includes, but is not limited to, statements from the Petitioner, immigration records, a professional plan, industry reports, professional and educational records, work experience and recommendation letters, and financial records.

In finding that the Petitioner did not establish the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework, the Director mentioned that the evidence submitted relates to the Petitioner's employment history and progression of his career. The Director then found that no evidence was submitted to show the broader implications of the proposed endeavor, and no evidence was submitted to show how the proposed endeavor would generate new income, have the potential to employ U.S. workers, or have any other positive economic effects. The Director mentioned that the Petitioner did not establish the proposed endeavor would sufficiently extend beyond an organization and its clients to impact the industry or field more broadly. The Director noted the Petitioner's statement regarding diversification and professional development in the hospitality industry, that he seeks to work as a general manager, and "[i]t does not matter if I start again in the USA at the hotel reception desk." The Director found the Petitioner failed to explain, in light of his willingness to work as a receptionist, how he would promote inclusion by hiring a diverse team of individuals, strengthen the workforce, and provide jobs for U.S. citizens. The Director referenced statistics about revenue and employment from the hotel industry, and then noted the absence of evidence that the Petitioner's management and hospitality skills correlate to hotel chain investing, patron reservations, or guest spending. Based on the above analysis, the Director determined that the proposed endeavor lacks national importance.

On appeal, the Petitioner asserts that proposed endeavor has national importance because the hospitality industry is a vital component of the U.S. economy, and its growth and success have the potential to impact the nation in various ways. Specially, the Petitioner mentions that the hospitality industry creates jobs; is a significant contributor to the gross domestic product; has a strong impact on international tourism; and promotes local and national culture and history through food, entertainment, and other offerings. In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

Next, the Petitioner makes the same and similar arguments that he made in response to the RFE. Specifically, he emphasizes that the proposed endeavor will promote diversity and inclusion, corporate responsibility, and strengthening of the employer brand. He states that he will cultivate the potential of each team member through training programs, mentoring, and skills development; and he will implement policies promoting the inclusion of underprivileged individuals and the disabled. The Petitioner therefore asserts that the proposed endeavor benefits societal welfare, has substantial positive economic effects, and has broader implications in the U.S. hospitality industry. The Petitioner states that his professional plan establishes these three benefits as well. The Petitioner repeats prior arguments that his proposed endeavor will result in employment opportunities, skill development, diversity and inclusion, community impact, enhanced corporate image, reduction of welfare dependence, stimulus to consumption, and attraction of investment and tourism. The Petitioner refers to a previously submitted article about the importance of an economy that is socially inclusive.

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 general manager services in the hospitality industry, 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. We acknowledge the Petitioner's claims that the individuals he would manage would be of a diverse background, he would benefit them through training and mentoring, and he would implement inclusive policies at his future place of employment. Although the Petitioner asserts that his proposed endeavor stands to generate jobs for a diverse group of U.S. workers, the record does not include sufficient evidence establishing that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or that 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. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his future employer and its clientele to impact his fields, the general manager and hospitality industries, or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner has not established that he meets the requisite first prong of the *Dhanasar* analytical framework. Therefore, he has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *See Bagamasbad*, 429 U.S. at 25.

ORDER: The appeal is dismissed.