U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34930355

Date: DEC. 19, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an exercise physiologist and 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 Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the Petitioner established his underlying eligibility for EB-2 classification as an advanced degree professional, but that he did not establish he merited a national interest waiver.

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;

[1] *See Brasil v. Sec'y of DHS*, 28 F.4th 1189, 1194 (11th Cir. 2022) (concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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 determined that the Petitioner is an advanced degree professional and therefore qualifies for the underlying EB-2 visa classification. Thus, the remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver.

The Petitioner's proposed endeavor is to work as an exercise physiologist and establish related businesses in the United States. The Director concluded that the Petitioner's proposed endeavor had substantial merit. We agree. However, the Director denied the national interest waiver, concluding that the Petitioner had not established any of the prongs under the *Dhanasar* analytical framework as required for the waiver, namely that his proposed endeavor was nationally important, that he was well positioned to advance the proposed endeavor, and that on balance, waiving the job offer requirement would benefit the United States. *Id.* On appeal, the Petitioner claims the Director erred in its conclusion, and that he meets all three prongs under the *Dhanasar* analytical framework and merits a national interest waiver. For the reasons discussed below, we find that the Petitioner has not established eligibility for a national interest waiver under the *Dhanasar* analytical framework, as he has not established the national importance of his proposed endeavor.

A. Substantial Merit and National Importance

The first prong of the *Dhanasar* framework, relating to substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Id.* The endeavor's merit may be demonstrated in areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact, and "look for broader implications." For instance, we noted in *Dhanasar* that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Further, "[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.

The Petitioner provided, in part, professional plans wherein he stated that his proposed endeavor was to work as an exercise physiologist and entrepreneur. He explained that in this position he would provide services such as personal training, bodybuilding training, sports exercise psychology, and clinical exercise psychology, and that he seeks to empower individuals in their weight loss journeys and inspire a broader movement towards various sports activities. He stated that he would build his network and travel throughout the United States, including in economically distressed areas, and will establish fitness centers, wellness clinics, and related businesses. He claimed his proposed endeavor is nationally important because promoting health and well-being contributes to a healthier population which, in turn, leads to cost savings and improved overall public health which aligns with national and global efforts to promote healthier lifestyles, reduce health care costs, and advance sustainability. He

asserts his unique knowledge and expertise in health science will contribute to innovative training methods to cure and prevent many diseases. He further asserts that by establishing fitness centers, wellness clinics, and related businesses in economically distressed areas that his proposed endeavor has significant potential to employ U.S. workers. He also generally claims the proposed endeavor will broadly enhance societal welfare and is described as having national importance by a government entity.

The Petitioner submitted an expert opinion letter that highlights his experience and notes the demand for exercise physiologists in the United States, as well as the importance of regular physical activity to individuals and the government. He also submitted seven letters of recommendation that generally speak to his character and professional experience. Finally, the Petitioner submitted articles relating to chronic diseases, obesity, and exercise, as well as general information regarding exercise physiologists.

We acknowledge the evidence of the Petitioner's education and experience in the field of exercise physiology, including the information contained in his resume and letters of recommendation, as well as his claim on appeal that this evidence shows a measure of past success that establishes his proposed endeavor will have an effect on the United States as a whole. This evidence, however, relates to whether the Petitioner is well positioned to advance his proposed endeavor rather than whether his proposed endeavor is nationally important. Similarly, we note the articles he provided that discuss the importance of exercise and the role exercise physiologists may play in improving overall health. As noted above, however, our focus in assessing national importance is on the specific endeavor that the Petitioner proposes to undertake and its prospective impact rather than the importance of the industry or profession in which the individual will work. *See id.* at 889.

Here, the Petitioner has not offered sufficient information and evidence to demonstrate his work as an exercise physiologist and entrepreneur would extend beyond his clients, or that the services he will provide offer original innovations to advance, or otherwise have national or global implications in, the field of exercise physiology commensurate with national importance. The Petitioner's general assertions in his professional plans regarding the contributions his proposed endeavor may make to improving overall health lack sufficient probative detail and are not corroborated in the record to establish the asserted contributions would have broader implications in the field of exercise physiology or would have other broader prospective impact. Additionally, we note the letters of recommendation and articles submitted by the Petitioner do not address the specific services the Petitioner would provide as an exercise physiologist or his plans for establishing fitness centers, wellness clinics, and related businesses, nor do they discuss with sufficient specificity the impact or broader implications of those plans to corroborate the claimed impact he asserts would result from his specific endeavor. Similarly, while the Petitioner generally claims his proposed endeavor would support economic growth and create new employment opportunities, he does not explain and has not provided sufficient evidence showing how this would be accomplished or the scale of any potential economic impact his proposed endeavor may have. Consequently, the record is insufficient to establish his proposed endeavor has *significant* potential to employ U.S. workers or has other *substantial* positive economic effects. Accordingly, we find the Petitioner has not established that his proposed endeavor is nationally important.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, requiring that he demonstrate his proposed endeavor is nationally important. He therefore has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

As noted above, the Director also concluded that the Petitioner did not establish that he was well positioned to advance his 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, as are required under prongs two and three of the *Dhanasar* analytical framework. While the Petitioner also contests these conclusions on appeal, since our determination that he did not establish that his proposed endeavor is nationally important is dispositive of his appeal, we decline to reach and hereby reserve the appellate arguments on these issues. *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).

ORDER: The appeal is dismissed.