U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34837249

Date: FEB. 5, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a dentist, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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.

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.* If a doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent degree. *Id.*

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

Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Petitioner states that his proposed endeavor is to continue his work in the dental field to improve the oral health of underprivileged communities. The Director determined that the Petitioner established his eligibility for the EB-2 classification as a member of the professions holding an advanced degree. However, the Director further concluded that the Petitioner did not establish eligibility for any of the three prongs of the *Dhanasar* framework, and therefore is not eligible for a national interest waiver as a matter of discretion. On appeal, the Petitioner contends that the Director failed to review the totality of the evidence and failed to abide by the requisite standard of review and in part, that the Petitioner's proposed endeavor is of national importance. Upon de novo review, we conclude the Petitioner's proposed endeavor does not rise to the level of national importance as set forth in the *Dhanasar* framework.

The first 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. *Id.* The Petitioner states that his proposed endeavor is to work in the dental field in the United States; increasing access to dental services to improve the oral health of underprivileged communities. The record includes information on the importance of and disparities in oral healthcare and information on the dental industry; along with government initiatives related to this field. We conclude that the proposed endeavor has substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* Before we discuss potential prospective impact, we note that the Director determined there was a material change to the Petitioner's proposed endeavor. The Petitioner disagrees with this determination. In the initial filing, the proposed endeavor is stated as, providing "consulting services for dental professionals through the dental program [redacted] to contribute to the improvement of the oral and emotional health of the low-income population and those located in vulnerable areas to provide them with quality dental care through low-cost comprehensive plans." The Petitioner also has a plan called [redacted] where he seeks to create dental offices in different locations. In response to the request for evidence (RFE), the Petitioner submitted evidence of a new business; a dental practice. The Petitioner contends that this new business is not a material change, as the Director concluded, but the vehicle to achieve his original proposed endeavor. The Petitioner's RFE response, including the proposed endeavor statement and national

[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).

importance statement include information about the initial programs, however the business plan does not. Nevertheless, the business plan seeks to further the goals of the two programs in providing access to dental care to low-income individuals and creating various offices throughout Florida. Therefore, we will analyze the business plan as part of his proposed endeavor.

The Director determined that the Petitioner and those that wrote letters on his behalf place considerable emphasis on the overall importance of the field and industry and not on the impact of the proposed endeavor itself. The Petitioner contends that he provided "vast evidence to demonstrate that the endeavor [the Petitioner] proposes to undertake has national importance." He specifically highlights various articles in the record in support of his proposed endeavor; however, the articles are about the field and industry as a whole. For example, he submitted an article entitled, "Oral Health in America. Advances and Challenges" and a U.S. government list on basic strategies for collective impact on oral health. Although this provides good background information, demonstrates the importance of the industry, and provides evidence of substantial merit; it does not speak to the Petitioner's specific endeavor and its impact on the industry. The relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the [Petitioner] proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner improperly relies upon the importance of the industry to further establish the national importance of his proposed endeavor. Without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework. The Petitioner intends to work in this field, but there is insufficient evidence to establish that he will broadly impact this field. Without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

The Petitioner asserts that his proposed endeavor has significant potential to employ U.S. workers and will have substantial positive economic effects. An 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 contends that his dental practice will hire twenty-one employees by its fifth year of operation and that he will pursue his endeavor in an economically depressed area as he contends that Florida is considered to be economically distressed. He asserts that his company will be headquartered in [redacted] Florida and that, "Florida, in general, is a state with many areas designated as HUBZones. . . ." In addition, he will "establish a business and provide employment in areas where it is most needed."

Here, the record does not establish that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects as the record does not establish his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida. Specifically, the record does not support that the direct creation of twenty-one additional jobs in this sector or the expected tax revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework. The Petitioner submitted a letter from an IRS tax professional that states the proposal [redacted] is a valuable asset from a tax perspective. However, the record does not include an in-depth proposal for [redacted] for us to analyze from a tax perspective. The letter indicates that there could be tax

benefits associated with the proposal, but there are no specifics from which we would be able to analyze if the prospective tax benefits of this specific program would equate to "substantial positive economic effects." *Dhanasar*, 26 I&N Dec. at 890.

In addition, the record emphasizes that the Petitioner's business will impact HUBZones as he states, there are many in Florida. However, the Petitioner has not established that his business will be located in a HUBZone. Further, he did not indicate that his endeavor would participate in the HUBZone program or that it would be eligible to do so. While it appears that the Petitioner may have intended to equate a designated HUBZone with an "economically depressed area," the record does not support a conclusion that this is an equitable comparison. The Petitioner has not otherwise provided evidence that the area where his company will operate is economically depressed, that it would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue. While his intentions are meritorious, the Petitioner has not provided corroborating evidence to support these claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *Chawathe*, 25 I&N Dec. at 376. The Petitioner's claims of his proposed endeavor's economic impact have not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide these benefits to the United States.

The Petitioner states that his proposed endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives. We agree that the oral healthcare field is a matter of national importance. However, the Petitioner has not submitted sufficient evidence of the impact of his proposed endeavor on these national initiatives. As we addressed above, the relevant question for determining national importance 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 [Petitioner] proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889. The Petitioner's reference to "a matter that a government entity has described as having national importance or is the subject of national initiatives" in the context of determining whether the proposed endeavor may have national importance is misplaced because-regardless of whether a generalized industry or field may have national importance or is the subject of a national initiative the record must nevertheless establish how "the specific endeavor that [the Petitioner] proposes to undertake" may have "national or even global implications *within a particular field,* such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or ... other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90 (emphasis added).

The record does not establish the Petitioner's proposed endeavor will broadly impact the dental industry or significantly reduce the existing challenges that the record highlights. Instead, the business plan discusses how the Petitioner plans to operate his business, providing dental healthcare services to clients. 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. Similarly, without sufficient documentary evidence of a broader impact to the dental industry, the record establishes the impact is limited to the Petitioner's company and his prospective clients. Therefore, the Petitioner's proposed endeavor does not meet the national importance element of the first prong of the *Dhanasar* framework.

Lastly, we note that the Petitioner highlights the Director's discussion of the various letters as part of the national importance analysis. The Petitioner submitted letters demonstrating interest in his proposed endeavor along with letters that highlight the Petitioner's experience and skillset. We agree with the Petitioner, that this evidence is more relevant to *Dhanasar's* prong two analysis, on whether the Petitioner is well-positioned to advance the proposed endeavor, than a national importance analysis. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the Petitioner is ineligible for a national interest waiver, we need not reach, and therefore reserve, remaining *Dhanasar* prongs. *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).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established by a preponderance of the evidence that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.