U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29832042

Date: FEB. 7, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a music director, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established 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. 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 establish eligibility for a national interest waiver, petitioners must demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or as an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. In addition, petitioners must show the merit of 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if:

- 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.

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially indicated:

> [The Petitioner's] plan is to continue his career in the United States as General Manager and Music Specialist. He will advance his proposed endeavor through [redacted], the company he will found [sic] in [redacted], Florida, and through which he will open and actively operate a music school and a cultural events promotion business that will employ eight (8) people in its first year of operation. A total of 25 Americans will be employed by the startup's fifth year of operation. This is of substantial merit and national importance to the national economy because of the ripple effects that will be generated such as the creation of new jobs, and sales and income tax revenue.
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> [The Petitioner's] specialized drumming and performance skills, business administration degree, music director experience, and other requisite certifications, gained over the past two decades make him highly qualified to introduce novel Brazilian Samba music classes through a planned network of music schools, and to organize cultural festivals and gatherings, through the music, fine arts schools and concerts and events industries in the U.S. His goal is to give individuals of all ages access to music education to help them reap the documented health and social benefits, as well as to promote and provide an introduction to Samba and Latin American music and culture in the U.S., particularly at the community level.

In response to the Director's request for evidence (RFE), the Petitioner claimed:

> . . . I intend to continue my career in the United States as a Music Specialist and Entrepreneur in the arts industry through [redacted], the company I will start up own in [redacted] Florida. Through my U.S. company, I will provide music education and offer music event organization services that will create several direct and indirect jobs already within the first year.
>
> My small business will therefore bring economic benefit to the United States through the new jobs it will create, in the income and sales tax revenues that will be generated. Local subcontractors and businesses will also be supported through the services my company will contract (accounting, legal, marketing, etc.) for its successful operation. But even more important than the economic aspects that my company will generate it is the artistic, cultural, and social benefits that I will be able to bring to the United states with my music.

The Director found the Petitioner established the proposed endeavor's substantial merit but not its national importance. Regarding substantial merit, the endeavor's merits may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. On appeal, the Petitioner maintains the national importance of his proposed endeavor.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner argues through the submission of his evidence, statements, and business plan the importance of a wide range of topics, such as entrepreneurialism, immigrant entrepreneurialism, music education, music therapy, music and health, and other related subjects, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing his particular samba music education and music event organization services through his business rather than the importance of music, music education, or the industry or field.[2] In *Dhanasar*, we 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.

In addition, the Petitioner references his "skills and knowledge." However, the Petitioner's experience and abilities in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor he proposes to undertake has national importance under *Dhanasar*'s first prong.

Moreover, 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. The Petitioner did not establish how owning and operating a music school and cultural events promotion business in the [redacted], Florida area, as well as plans to expand to two other regions, rises to the level of national importance. In *Dhanasar*, we determined 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, the record does not show through supporting documentation how his particular business and services sufficiently extend beyond his prospective students and clients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner's business plan does not demonstrate how his business' claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the revenue forecasts $392K in year 1 to $1.3M in year 5, as well as generate tax revenue of $49K in year 1 to $183K in year 5, the business plan does not establish the benefits to the regional or national economy would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 890. Similarly, although the plan claims the business would create 8 positions in year 1 to 25 positions in year 5, the Petitioner did not show that such future staffing levels would provide substantial economic benefits to [redacted], Florida or the other two regions or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not demonstrate that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not establish that, beyond the limited benefits provided to its prospective

[2] The Petitioner's arguments and evidence relate more to the substantial merit of the proposed endeavor rather than the national importance part.

clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

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. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[3]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude he has not demonstrated eligibility 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.

[3] *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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).