U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28786280

Date: FEB. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business consultant, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition. The Director concluded that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate his eligibility for the requested 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) 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.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that 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.

II. ANALYSIS

The Petitioner proposes to work as the chief executive officer and legal advisor for a legal consulting business he co-founded with his wife and children in Florida. The Petitioner has worked as a lawyer in Brazil after earning a bachelor's degree in law from [redacted] Brazil in 1991. The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree.[3]

However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further found that the Petitioner did not establish that he is well positioned to advance the proposed endeavor under the second Dhanasar prong, and 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 under the third Dhanasar prong. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[4]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner's business plan indicates that his business would provide its legal services to entrepreneurs and companies located in the United States, Brazil, and South America who plan to

[2] 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).

[3] To demonstrate he is an advanced degree professional, the Petitioner submitted his academic certificate and transcripts from [redacted] two academic evaluations; and letters from his previous employers and colleagues. The record demonstrates that he holds the foreign equivalent of a U.S. bachelor's degree in law and at least five years of progressive experience in his specialty. See 8 C.F.R. § 204.5(k)(3).

[4] While we may not discuss every document submitted, we have reviewed and considered each one.

invest in either the United States or Brazil. The business would specialize "in providing technical and legal support on the complex Brazilian legislation, including issues involving the export of American products to Brazil, taxes, family, inheritance, retirement, labor law and labor procedural, and union rules." The business "aims to help American businesses navigate the complexities of Brazilian laws and regulations and identify potential legal problems, providing solutions based on its practical experience." We agree with the Director that the Petitioner's endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the record did not demonstrate that his proposed endeavor "stands to affect or advance the broader industry, or that it otherwise has wider implications in his field at a level sufficient to establish the national importance of his endeavor." The Director found that the Petitioner did not establish the national importance of his proposed endeavor, and therefore, he did not meet the first prong of the Dhanasar analytical framework.

The Petitioner contends on appeal that the Director "did not apply the proper standard of proof . . ., instead imposing a stricter standard, and erroneously applied the law . . . ." (emphasis omitted). The Petitioner further argues that the Director "did not give due regard" to the evidence submitted, specifically the business plan describing the Petitioner's professional experience and benefits of the proposed endeavor; letters of recommendation attesting to the Petitioner's work in the field; and industry reports and articles showing the national importance of the proposed endeavor and the need for professionals in his field. Upon de novo review, we find the record does not demonstrate that the Petitioner's proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

On appeal, the Petitioner argues that his proposed endeavor has national importance, particularly because it will "generate substantial ripple effects upon key business activities on behalf of the United States" and would be "a vital aspect of U.S. legal operations and productivity - which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy." (emphasis omitted). The Petitioner stresses his more than 25 years "of progressive experience and acumen in the legal field" (emphasis omitted) and his educational credentials to argue that his "work offers broad implications to the United States' legal business industry, specifically through his endeavors within key commercial segments." (emphasis omitted).

The Petitioner further argues his proposed endeavor will benefit the United States "by creating jobs and economic stability." He relies on his professional background to emphasize that he "has brought numerous advantages to the organizations he has served . . ." by stimulating "his served companies' economic capacities" and prioritizing "customer satisfaction by ensuring all clients are aligned with their actual needs, furthering customer loyalty." The Petitioner argues the United States "would

benefit from investing in well-versed legal professionals such as [the Petitioner], who are knowledgeable regarding potentially profitable markets for U.S. companies in regions that are economically and politically strategic, yet extremely complex." (emphasis omitted). He contends his "proposed endeavor will have multiple positive effects on the U.S. marketplace, thus enhancing business operations on behalf of the nation, and contributing to a streamlined economic landscape." The Petitioner asserts his "proposed endeavor is clearly of national importance, when considering how much a professional with his caliber can contribute to the national interests, and to the U.S. economy, regardless of a labor certification." (emphasis omitted).

However, the Petitioner's reliance on his academic credentials, professional experience, and achievements to establish the national importance of his proposed endeavor is misplaced. His academic credentials, professional experience, and achievements relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. 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. See id. at 889.

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 the field more broadly. Id. at 893. Likewise, the record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the legal field, as contemplated by Dhanasar: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. The evidence does not suggest that the Petitioner's legal consulting business would impact the legal field more broadly.

With the petition, the Petitioner submitted his statement and a business plan which indicate his proposed endeavor has national importance based on potential economic benefits to his business' client companies and to the United States. The business plan contends, "Having a professional who can guide U.S. companies in each step under Brazilian legislation is essential for fast structural and economic growth." The business would "help develop and implement customized plans to maximize results and help each business to achieve its goals." He contends that his business would help client businesses "achieve higher efficiency and profitability" leading to the creation of jobs for the client businesses and generation of U.S. tax revenue. The Petitioner contends that helping client companies expand their business operations to the Brazilian market "will allow for great economic growth, increase in exportation, and achieve better economic stability through the diversification of commercial markets."

The business plan maintains that the Petitioner's business would impact the U.S. economy by creating jobs; generating tax revenue; increasing foreign trade and U.S. investment in Brazil; expanding U.S. businesses to international markets; transferring the Petitioner's legal knowledge to U.S. employees to help increase a qualified legal workforce for an industry in need of workers; supporting nationally important small and medium-sized businesses; and supporting U.S. national security guidance relating to protecting the security of the American people, expanding economic prosperity and opportunity, and defending democratic values. In addition, the business plan explains the Petitioner's academic credentials and professional experience; the business' services; its market opportunities targeting U.S.,

Brazilian, and South American entrepreneurs and companies; the need for the business' services based on the expected economic growth of Brazil and demand for Brazil legal services in the United States; a market analysis of the legal industry; and the business' proposed marketing, staffing, and financial forecasts.

However, the record does not sufficiently document the Petitioner's claimed potential prospective impact, including the asserted economic benefits to the United States. The Petitioner has not provided corroborating evidence to support his claims that his business' activities stand to provide substantial economic benefits to the United States. The Petitioner's claims that his legal consulting business will benefit the U.S. economy 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 economic benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that his proposed job duties as an owner, chief executive officer, and legal advisor of his new consulting business would impact the legal industry more broadly, rather than benefiting his business and his proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The business plan projects that by the business' fifth year, the business expects to hire nine direct employees, create 22 indirect jobs, and generate over $150,000 in tax revenue. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner has not provided corroborating evidence demonstrating that his business' future staffing levels and business activities stand to provide the claimed substantial economic benefits to the United States. While the Petitioner expresses his desire to contribute to the United States, he has not established with specific, probative evidence that his proposed endeavor will have broader implications in his field, will have significant potential to employ U.S. workers, or will have other substantial positive economic effects for the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. See id. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that hiring nine direct employees, creating 22 indirect jobs, and generating taxes of over $150,000 by its fifth year of business rises to the level of national importance.

The Petitioner further claims on appeal that the national importance of his proposed endeavor is evidenced in industry reports and articles. He stresses in his business plan that reports and articles demonstrate the shortage of legal professionals in the United States, particularly legal professionals with knowledge of the Brazilian legal system to assist U.S. businesses expanding to the Brazilian market. The record includes industry reports and articles relating to the expected growth of the legal services market in the United States and the expected job outlook for attorneys in the United States.

We recognize the importance of the legal services industry and related careers; however, merely working in the legal field or starting a legal consulting business is insufficient to establish the national importance of the proposed endeavor. Instead of focusing on the importance of an industry or the need for workers in a specific industry, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889. 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. The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor.

We note that the record includes an opinion from [redacted], an attorney licensed to practice law in Connecticut and an adjunct professor of political science at [redacted] in Connecticut. The opinion includes an analysis of the national importance of the Petitioner's proposed endeavor stating, "[The Petitioner] would work in the United States in an area of substantial merit and national importance." (emphasis omitted). The opinion explains the expected growth of job opportunities in the legal field, including lawyers, and that U.S. businesses would benefit from the Petitioner's "expertise and skills" as an experienced labor lawyer.

However, the opinion does not focus on the Petitioner's specific endeavor and it having a potential prospective impact on the U.S. economy, or in the field of his proposed endeavor. In fact, the opinion does not mention the Petitioner's proposed endeavor to work as a legal advisor for his new legal consulting business. The opinion's focus on the need for lawyers, the expected growth of the legal services industry, and the Petitioner having the professional skills to fill a need for lawyers does not demonstrate that the Petitioner's specific endeavor may have a prospective impact in his field. Simply stating that his work would support an important industry is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The Petitioner does not demonstrate that his proposed endeavor extends beyond his business and his future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as the owner, chief executive officer, and legal advisor of his proposed legal consulting business offers original innovations that contribute to advancements in his industry or otherwise has broader implications for his field. The economic benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed business' legal consulting work and the claimed economic results.

Because the documentation in the record does not sufficiently 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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("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

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.