U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29846255

Date: FEB. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business coach and consultant, seeks classification as a member of the professions holding an advanced degree. *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. 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, concluding that the Petitioner qualifies for the EB-2 classification as a member of the professions holding an advanced degree but that the record did not establish that a waiver of the job offer requirement is 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, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility for the 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 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 a 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.

II. ANALYSIS

The Petitioner proposes to work as a business coach through his own company, based in Florida. The Petitioner states that he will provide tailored business coaching services and will offer his expertise and guidance to individuals and organizations seeking to enhance their sales, marketing, and overall business development strategies.

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. Based upon the evidence in the record that the Petitioner has obtained the foreign equivalent of a bachelor's degree in business administration followed by at least five years of progressive experience in business development, we agree. Additionally, the Director analyzed the record as to whether the Petitioner qualifies as an individual of exceptional ability but concluded that the record did not establish that the Petitioner qualifies as such.

As to the Petitioner's request for a waiver of the job offer requirement, the Director concluded that the Petitioner did not establish any of the three required *Dhanasar* prongs, and therefore is not eligible for a national interest waiver. Regarding the first *Dhanasar* prong, the Director did not make a finding as to whether the Petitioner demonstrated the endeavor's substantial merit but did conclude that the Petitioner did not demonstrate its national importance. The Director stated that the Petitioner, in the initial filing, "submitted evidence in an attempt to demonstrate that he is an alien of exceptional ability" but "failed to specify her proposed endeavor and failed to explain how the evidence in the record demonstrates she satisfied the three-prong test" in *Matter of Dhanasar*. As to the Petitioner's business entity, the Director noted that "a search in Google net and EDGAR did not reveal" the existence of this entity.[2] The Director also determined that the Petitioner did not establish that the proposed endeavor has the significant potential to employ U.S. workers or otherwise offers substantial positive economic effects. The Director additionally concluded that the evidence did not show that the endeavor has national or global implications within the field. Finally, the Director found that the Petitioner's business plan did not demonstrate the potential prospective impact of the Petitioner's endeavor. The Director similarly concluded that the Petitioner did not demonstrate that he is well-positioned to advance the proposed endeavor or that, on balance, waiving the job offer requirement would benefit the United States.[3]

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[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).

[2] EDGAR, the Electronic Data Gathering, Analysis, and Retrieval system, is the primary system for companies and others submitting documents under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, and the Investment Company Act of 1940. U.S. Securities and Exchange Commission, About EDGAR, https://www.sec.gov/edgar/about.

[3] Because we agree with the Director's ultimate conclusion as to the national importance element of the first *Dhanasar*

On appeal, the Petitioner makes several assertions regarding specific claimed deficiencies in the Director's decision. First, the Petitioner asserts that the Director erred by analyzing whether the Petitioner is an individual of exceptional ability, because the Petitioner does not seek to be classified as such and instead qualifies for the EB-2 immigrant classification as an advanced degree professional. The Petitioner also contends that the Director erred by not making a finding as to whether the proposed endeavor has substantial merit. Additionally, the Petitioner points out that the Director used feminine pronouns in some of the decision language, although the Petitioner is male and uses masculine pronouns. The Petitioner further asserts that the Director erred by invoking "Google net and EDGAR" to determine that the Petitioner's business entity does not exist. Finally, the Petitioner notes that he did not submit a business plan, although the Director refers to a business plan in the decision. The Petitioner contends that these "procedural errors cause confusion regarding whether [the Petitioner's] case was properly evaluated and whether the denial was appropriate."

As to the Petitioner's claim regarding his eligibility for the EB-2 classification, we agree with the Petitioner that an individual need only establish that they are either an advanced degree professional or an individual of exceptional ability, and not both, to qualify for the classification. Section 203(b)(2)(B)(i) of the Act. The Director did not need to analyze the Petitioner's eligibility under both sections, but we do not agree that completing this additional analysis is necessarily a legal error. However, the Petitioner also notes that there are several places in the decision where the Director, after determining that the Petitioner is an advanced degree professional, refers to the Petitioner as "not qualifying for the requested classification" and appears to consider the Petitioner not qualifying as an individual of exceptional ability to be a negative factor. While the additional analysis as to exceptional ability was not necessarily in error, we do acknowledge that these statements later in the decision create confusion. Therefore, we withdraw the Director's decision inasmuch as it considers the Petitioner not demonstrating that he is an individual of exceptional ability to be a negative factor.

Additionally, we acknowledge that the record does not contain a business plan, as the decision claims, and we withdraw the Director's statement to the contrary. We also withdraw the Director's analysis as to whether the business entity's existence could be determined through the Director's independent searches of "Google net and EDGAR," particularly as the Director did not explain the relevance of the EDGAR search. We acknowledge the documentation in the record as to the business entity's formation in the state of Florida. While this evidence does not establish any particular level of actual business operations, we conclude that it does establish, by a preponderance of the evidence, the business's formation and existence in the state of Florida as of the date of the document. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

However, we conclude that the Director did not err by not making a finding regarding the endeavor's substantial merit. The Director concluded that the Petitioner did not establish the endeavor's national importance and did not establish either prong two or prong three of the *Dhanasar* framework. As each of these elements is required to demonstrate eligibility for a national interest waiver, these findings are a sufficient basis for denial. The Petitioner does not cite to a law or policy in support of the claim that this constitutes a legal error or that a Director must make a finding as to each required element in

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prong, and because, as we discuss below, this is dispositive of the Petitioner's appeal, we need not summarize the Director's decision as to the second and third prongs here.

order for a decision to be sufficient. Similarly, regarding the Director's use of pronouns, although we acknowledge that the Director used feminine pronouns in several places, in the context of the decision overall, this claimed error is, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors).

Overall, we recognize the Petitioner's contentions as to the claimed errors in the Director's decision, and we conclude that some of these are meritorious. Accordingly, we withdraw those portions of the Director's decision, as detailed above. However, following review, we conclude that the decision is sufficient and specific enough to provide the Petitioner a fair opportunity to contest the decision and us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Moreover, we conduct a de novo review and have considered the evidence in the record in full. While we may not discuss each piece of evidence in the record in our decision, we have reviewed and considered each one.

We turn now to the Petitioner's specific claims of eligibility under the requisite *Dhanasar* prongs, beginning with whether the Petitioner has established the national importance of the proposed endeavor. In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

The Petitioner contends on appeal that the evidence, if considered under the preponderance of the evidence standard, does demonstrate the national importance of the proposed endeavor. Specifically, the Petitioner asserts that the personal statement, the expert opinion letter, and the articles and studies in the record regarding business coaching and business development demonstrate the endeavor's national importance.

Upon de novo review, we conclude that the Petitioner's personal statement does not sufficiently demonstrate the national importance of the proposed endeavor. The statement describes the Petitioner's educational background, his work experience, and the some of his accomplishments in his field. The Petitioner also describes in his statement his business coaching services and goals for the company he has established. The Petitioner states that through his personalized coaching sessions, he explores with his clients "techniques such as market evaluations, competitive analysis, lead generation, sales tracking, market research, and assessing business potential." The Petitioner states that he empowers his clients to "make informed decisions" and enables them to "unlock their full potential." The Petitioner claims in his statement that through this endeavor, he will "actively contribute to the development of a thriving, resilient, and prosperous economy for the United States." The Petitioner states that the benefits of his services include increased productivity, retention of talent, increased innovation, and a positive "ripple effect" for other organizations and "society as a whole." However, personal statement does not sufficiently explain how the Petitioner's coaching services will impact the field or the population beyond his own clients at a level commensurate with national importance. The

personal statement does not explain how the Petitioner's approach meaningfully differs from other business coaching services, has the potential to be replicated through the field, or otherwise stands to have a broad impact. The Petitioner's statement helps demonstrate that the proposed endeavor stands to benefit the Petitioner's clients; however, it does not demonstrate that the endeavor stands to have broader implications for the business coaching industry or for the economy.

The Petitioner also asserts on appeal that the opinion letter submitted in response to the request for evidence helps demonstrate the national importance of the proposed endeavor. The Petitioner states that the opinion letter is from "an independent and neutral expert in the field" and provides a "vast analysis regarding the economic implications of [the Petitioner's] endeavor." The opinion letter, from an associate professor of marketing at [redacted], provides statistics about the management consulting industry, the demand for these types of services, the importance of small businesses to the U.S. economy, and the benefits of business coaching services to companies and their business development. However, these claims relate to management consulting and business coaching, and the importance of these industries overall, rather than to the Petitioner's specific endeavor. 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." *Matter of Dhanasar*, 26 I&N Dec. at 889. Although the professor claims that the Petitioner "will use his expertise" to help businesses in the United States "improve operations and achieve better productivity and profitability," the professor does not describe how the Petitioner's endeavor has the potential to do so at a scale that would result in a broad impact on the field or the U.S. economy. The opinion letter does not discuss how the specific, proposed endeavor may have national or even global implications that would rise to the level of national importance. *Id.* at 889-90.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the opinion letter is of little probative value as it primarily repeats the information stated by the Petitioner and conflates the importance and benefits of business consulting in general with the national importance of the Petitioner's specific endeavor.

Finally, the Petitioner asserts on appeal that the "probative research" submitted supports the national importance of the proposed endeavor. The record contains articles and studies related to the impact and benefits of business coaching. However, this evidence again relates to the importance of the field in general and the industry overall. As noted above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. None of the articles discuss the Petitioner's proposed endeavor, its potential impact, and how it may have national importance. *See id.*

We note that, on appeal, the Petitioner contends that he "submitted approximately three hundred (300) pages of documentation establishing a preponderance of the evidence (more likely than not), which was then summarily dismissed by the officer without providing an accurate analysis" (emphasis in

original). While the Petitioner provided a significant volume of evidence, eligibility for the benefit sought is not determined by the quantity of evidence alone but also the quality. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). Even considering the evidence in its totality, we conclude that it is insufficient to demonstrate that the Petitioner's specific, proposed endeavor has the potential to result in a broad impact as contemplated by *Matter of Dhanasar*. Accordingly, and for the reasons discussed above, we conclude that the Petitioner has not established the national importance of his proposed endeavor.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the substantial merit of the proposed endeavor or second or third *Dhanasar* prongs. *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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

We withdraw the portions of the Director's decision described above. However, because the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework as to national importance, we conclude that the Petitioner has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.