U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28838637

Date: FEB. 27, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an attorney, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *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. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Nebraska Service Center denied the petition, concluding the record did not establish that 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, 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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 whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Director observed the Petitioner was eligible for EB-2 classification as an individual who is a member of the professions holding an advanced degree. But the Director ultimately concluded the Petitioner's substantially meritorious[1] proposed endeavor did not rise to a level of national importance as required by the first prong of *Dhanasar*. The Director also determined that the Petitioner was not well positioned to advance their proposed endeavor. And the Director concluded that on balance of applicable factors, a waiver of the requirement of a job offer, and thus a labor certification, would not be beneficial to the national interest.

On appeal, the Petitioner contends the Director's decision was based on an erroneous conclusion of law and facts. Specifically, the Petitioner contends the Director applied a higher standard of proof

[1] The Petitioner submitted numerous articles, web pages, and reports from non-profit research organizations and executive level agencies related to the importance of information technology in the United States. This evidence supported the overall merit of the Petitioner's proposed field of endeavor. So the Director correctly concluded the Petitioner's proposed endeavor had substantial merit. But the same evidence does not adequately describe how the Petitioner's specific proposed endeavor demonstrates it has national or even global implications in the particular field, would broadly implicate matters rising to a level of national importance in the field, or confers positive economic effects as we will discuss below.

than the preponderance of the evidence standard and asserts the Director did not consider the totality of the evidence the Petitioner submitted. Although the evidentiary standard in immigration proceedings is the lowest preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits. The Petitioner submitted their curriculum vitae, several recommendation letters, copies of their educational credentials, several certificates of attendance or participation in seminars or continuing education courses, articles and other "government reports" about international business, maritime law, foreign and direct investment, expert opinion letter, and professional plan.[2] The Petitioner states on appeal that the evidence they submitted in the record prior to and at appeal demonstrated that the Petitioner meets all three prongs under the *Dhanasar* framework and merits a discretionary waiver of the job offer, and thus the labor certification, in the national interest. But as explained below, the Petitioner's evidence and assertions do not help them carry their burden of production and persuasion because they do not sufficiently relate to the proposed endeavor's national importance under the first prong of the *Dhanasar* framework.

A. The Proposed Endeavor

The Petitioner intended to establish [redacted] to "offer consulting services…for the corporate sector of the industry and small and medium-sized companies, in legal areas, international negotiations and marine management." The Petitioner's endeavor sought to target "industries and companies of the public and private sectors of North America and especially" industrial, commercial and retail, and hospitality and housing companies. The Petitioner's entity would provide international trade consultant services offering "customs compliance solution" such as duty optimization, HTS classification and tariff engineering, U.S. customs disclosures and correspondence, U.S. customs audits, foreign trade zones analysis and setup, and free trade agreements and GSP advice. The Petitioner's endeavor proposed to positively influence foreign direct investment in the United States, particularly from Venezuela, and realize its potential to employ a significant number of U.S. workers. The infirmity in the Petitioner's description of their endeavor is patent upon examination into the evidence they introduced into the record. The Petitioner's evidence does not help them carry their burden of production and persuasion because it does not sufficiently support the proposed endeavor's national importance under the first prong of the *Dhanasar* framework.

B. National Importance

The Director concluded that the Petitioner did not demonstrate their proposed endeavor was of national importance because the Petitioner did not demonstrate that it has national or even global implications

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

in its field, the broader implications of the proposed endeavor, or its potential positive economic effects. For the below reasons, we agree.

In determining national importance under *Dhanasar*, the relevant question is not the importance of the field, 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. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have a 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. So it is not what duties or what occupation the noncitizen will fill or perform but their actual plan with their occupation and duties that is examined.

The Petitioner showcased their endeavor's potential global or national impact, any broader implications, and any positive economic effects stem from *their specific individual execution* of their proposed endeavor based on their past work in the field. And the corpus of the evidence the Petitioner submitted into the record does not stray far from this core assertion. But the Petitioner's assertion spotlighted a fundamental misunderstanding of the *Dhanasar* framework's first prong. The first prong focuses on the proposed endeavor; not on the Petitioner's execution of that proposed endeavor. The *Dhanasar* framework is consequently unconcerned with the success of the proposed endeavor or the Petitioner's track record in their field of endeavor previously.

For example, the Petitioner submitted several letters of recommendation into the record. But the letters do not refer to the Petitioner's proposed endeavor. Instead, they describe the Petitioner's competent acquittal of their assigned job duties or otherwise described the work they did previously. The Petitioner's past performance of the duties they intended to perform as part of their proposed endeavor does not support that endeavor's national importance. It is not sufficiently evident how the Petitioner's past performance of their duties has global or national implications, broader implications, or positive economic effects. In the same vein, the Petitioner's educational credentials and professional certificates earned from participation in seminars or continuing professional education exercises are not sufficient to demonstrate the national importance of their proposed endeavor.[3]

The Petitioner asserts on appeal that their endeavor has global or national implications within the economy. They contend that their proposed endeavor has the potential to serve the national interest of the United States by increasing foreign direct investment, particularly from Venezuela, and by employing a significant number of U.S. workers.

It is not evident from the Petitioner's professional plan how their proposed endeavor rises to a level of national importance. Whilst the professional plan describes the scope of the services it intends to perform, it does not sufficiently show how those services extend beyond the "industries and companies of the public and private sectors of North America and especially" industrial, commercial and retail,

[3] The Petitioner's contentions about their successful past performance in the field of endeavor they propose, as well as evidence and information of their achievements and recognition, would better serve a demonstration of eligibility under the *Dhanasar* framework's second prong.

and hospitality and housing companies they intend to target. Or in other words, it is not sufficiently clear how the Petitioner's provision of legal and business consulting services would have global or even national implications to their field beyond the companies they intend to target. Nor does the professional plan identify the broader implications of the proposed endeavor. For example, the Petitioner identified an increase of foreign direct investment, particularly from Venezuela, and significant job creation as benefits emanating from their proposed endeavor. But it is not evident how these benefits would broadly implicate matters rising to a level of national importance. For example, whilst the Petitioner identified increasing foreign direct investment, particularly from Venezuela considering their roots, they did not specify the magnitude of increase they expected to realize. An adequate evaluation of the broader implications of the Petitioner's proposed endeavor is impeded when it is not readily apparent how much foreign direct investment would be generated from the endeavor and how that relates to the United States interest in increasing or attracting foreign direct investment. Moreover, it is not readily evident in the record how attracting foreign direct investment specifically from Venezuela broadly implicates matters rising to a level of national importance. For example, the record does not address any distinction between foreign direct investment from Venezuela versus other international localities to discern whether Venezuelan foreign direct investment serves the national interest to a greater degree such that it rises to a level of national importance.

We said in *Dhanasar* 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 Petitioner's appeal generally mentions the proposed endeavor's capacity for significant potential to employ US workers. But the Petitioner's professional plan indicates a nascent plan to employ one individual at some indeterminate time in the future "as income increases" to employ "an employee to help with accounting management/coordination. This person will also provide support with social media and online marketing." The record does not support implications rising to a level of national importance, either nationally or more broadly to the field of the proposed endeavor, from a nascent plan to employ one individual to provide generally administrative duties for spillover employment "as income increases." Moreover, the Petitioner's professional plan does not indicate or identify any economically depressed area within which their proposed endeavor would create a job. So it is not entirely evident how the Petitioner's proposed endeavor positively effects economic considerations.

USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the submission of letters or opinion statements from experts supporting the petition is not presumptive evidence of eligibility. *Id*. The Petitioner submitted an expert opinion statement authored by [redacted] a "post doctor in organization management" an international law degree by and through [redacted] But this opinion statement does not illustrate how the Petitioner's proposed endeavor rises to a level impacting national importance. The author's opinion also focused only on the Petitioner's ability and achievement when rendering their opinion. As we stated previously the first prong focuses on the proposed endeavor. So, a petitioner's ability and achievement are not relevant considerations to evaluate the national importance of the proposed endeavor. The author does not venture further from their description of the Petitioner's ability and achievement to evaluate the Petitioner's specific endeavor and how it can have a prospective positive impact nationally or globally or from the broader implications of its specific contributions to the information technology field. Nor does the author

sufficiently describe any positive economic impacts. Or in other words, the author does not convincingly articulate the potential prospective impact of the Petitioner's endeavor so that a meaningful evaluation of the proposed endeavor's potential prospective impact can be made to determine if it rises to a level of national importance.

In sum, the record does not contain relevant, probative, or material evidence establishing the Petitioner's proposed endeavor has potential prospective impact either through national or even global implications, its broader implications to its field, or its positive economic effects. So we conclude that the Petitioner has not established that their proposed endeavor is of national importance.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that they do not merit a favorable exercise of discretion to waive the requirement of a job offer, and therefore a labor certification. And we reserve the issue of whether the Petitioner demonstrated eligibility under the remaining prongs of the *Dhanasar* analytical framework. 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). So we dismiss the Petitioner's appeal.

ORDER: The appeal is dismissed.