U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37102161

Date: FEB. 28, 2025

Appeal of Texas Service Center Decision

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

The Petitioner 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 eligibility for 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.

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

Id.

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 intends

[1] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, Third and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

to be a construction manager in the field of civil engineering. In his initial petition, the Petitioner described his endeavor as follows: "If I become a resident and carry out my activities in the United States of America, I am sincerely convinced that, based on my excellent work and the expertise acquired in Brazil, I would bring many benefits to North American society." In response to the request for evidence (RFE), the Petitioner provided a cover letter stating: "I am set to direct and oversee operations at [redacted] a forward-thinking construction firm based in [redacted] New York. My business model is centered around renovating and retrofitting existing buildings using sustainable and recycled materials. Additionally, I am committed to adopting advanced technologies that enhance energy efficiency and significantly reduce operating costs . . . . In summary, my proposed venture, [redacted] is an innovative construction company based in [redacted], New York, with a core focus on renovating and modernizing existing buildings using sustainable and recycled materials, as well as adopting advanced technologies to increases energy efficiency and reduce operating costs. The company will offer a comprehensive range of services, from meticulous project planning to supervision of all stages of construction, financial management, workplace safety and specialist energy efficiency consultancy. Additionally, [redacted] will seek to serve different market segments, offering affordable and premium solutions for low- and high-income clients, respectively, as well as consulting services for construction companies and real estate developers committed to sustainable practice. The venture aims to not only establish itself as a leader in sustainable construction, but also promote revitalized urban development in select communities, starting with [redacted] and expanding to other strategic regions across the United States."

The Petitioner also provided a business plan stating he "[. . . is a Brazilian citizen who will direct and oversee the operations of [redacted] . . . [redacted] goal is to provide tailored construction management services that meet the unique needs of each client, ensuring that every project is a testament to durability, functionality, and aesthetic excellence. Whether focusing to build new structures or renovate existing ones, their team is ready to guide the client every step of the way."

We do not disturb the Director's finding that the Petitioner has an advanced degree. On appeal, the Petitioner maintains that "[a]s the founder and manager of [redacted] my mission is to transform the construction industry in [redacted] New York, and beyond by providing sustainable, innovative, and efficient building renovations services. My company is designed to serve two distinct market segments: low-income families and high-end clients, each with tailored solutions that prioritize sustainability, quality, and community impact." As it relates to substantial merit, the endeavor's merit 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. The record contains sufficient evidence of the substantial merit of the Petitioner's initial 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 provided a wide range of articles on the construction industry, sustainability, infrastructure reports, the global priorities of the United Nations and the economic contributions of immigrant entrepreneurs, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing his services as a construction project manager. Here, the Petitioner's arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national

importance part. 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 Petitioner submitted a letter from A-A-[2] who found the Petitioner's initial proposed endeavor has national importance. However, the letter largely focuses on the importance of civil engineers in construction rather than focusing on the national importance of the Petitioner's specific, proposed endeavor. In addition, the letter does not persuasively explain how the Petitioner's particular services would have broader implications for our country. For example, A-A- asserts that in year 5 of [redacted] the Petitioner plans to employ 23 individuals with a payroll of $1,561,927.00. However, we cannot assess whether this job creation estimate is credible. Moreover, even if we were to assume that the estimate is credible, the record does not contain sufficient documentary evidence to establish that the jobs created, would result in "substantial positive economic effects" commensurate with national importance as contemplated by *Matter of Dhanasar*. *Id.* at 890. Any business or economic activity has the potential to positively impact the economy and the industry in which it operates; however, the Petitioner has not offered a sufficiently direct connection between his company's activities and any demonstrable economic effect. The record does not contain an evidentiary basis either to support the stated economic projections or to conclude that the economic effects of the proposed endeavor have the potential to rise to a level of national importance. 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. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how his services largely influence the field and rise 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. The record does not show through supporting documentation how his endeavor sufficiently extends beyond his prospective employers or low-income and high-end clients, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

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]

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

[2] We use initials to protect the identity of individuals.

[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).

ORDER: The appeal is dismissed.