U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29583447

Date: FEB. 29, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner 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, 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established 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 a member of the professions holding an advanced degree 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.

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While 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, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that 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 that 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 he or she 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; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

A. Whether the Proposed Endeavor has National Importance

The Petitioner described the endeavor as a plan "to manage my own United States cargo transportation company." The Petitioner elaborated that he founded a logistics and transportation company in the United States in [redacted] 2022, which will "extend its services to other parts of the U.S. supply chain, including large warehouses in the [w]est, [c]entral and [e]ast parts of the country."

In response to the Director's request for evidence (RFE), the Petitioner submitted a business plan, which describes the company's services as "packing and transporting household goods, as well as storage solutions." The business plan indicates the company will be based in [redacted] California, and it describes potential customers as "families and individuals interested in buying, selling, or renting homes, as well as business owners who are relocating their offices." The business plan asserts that the company "holds a license specific to the state of California, enabling it to conduct operations within the state" and that the company "is currently working on obtaining a license to expand its services to include long-distance moving options." The business plan also indicates that the Petitioner's company would employ 13 workers in the first year of operation, increasing to 50 workers in the fifth year of operation, including 20 "movers," 10 "foremen/drivers," nine "helpers," four "fleet

managers," two "sales managers" and "mechanics," respectively, and one "deputy" and accountant, respectively, in addition to the Petitioner, who would work as the company's general manager. The company's five-year plan includes opening a second local branch in [redacted] California, "opening a branch in [redacted] Massachusetts, [and] expanding to [redacted], Texas," while also "considering opening a branch or subsidiary in [redacted] Illinois." However, the business plan does not clarify the number of workers who would operate out of any particular location.

The Director generally concluded that the record establishes that the proposed endeavor "is of substantial merit and national importance."

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." *See Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The record in general, and the business plan specifically, does not establish how the proposed endeavor may have national importance. As noted above, whether the industry or field of cargo transportation is generally important is not the relevant question—instead, in determining national importance, we focus on whether the "specific endeavor that the [noncitizen] proposes to undertake" may have the type of broader implications contemplated by *Dhanasar*. *Id.* at 889. The proposed endeavor appears to benefit the Petitioner, as owner of the company, and the company's suppliers, customers, and clients. However, the record does not establish how the Petitioner's company may have national or even global implications within the field of cargo transportation, or any other field, "such as those resulting from certain improved manufacturing processes or medical advances." *Id.* at 889-90. We acknowledge that the business plan indicates the company, based in [redacted] California, would employ 13 workers in its first year of operation, increasing to 50 workers in its fifth year of operation. The record does not establish how employing 13 or even 50 workers with the stated positions, operating out of [redacted] California, and the other expansion locations indicated in the business plan, demonstrates "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area," as contemplated by *Dhanasar*. *Id.*

Based on the reasons discussed above, we withdraw the Director's statement to the extent that it indicates the proposed endeavor has national importance. Therefore, the record does not satisfy the first *Dhanasar* prong. *See id.* Because the record does not establish that the proposed endeavor has national importance, the remainder of the *Dhanasar* framework is moot. Nevertheless, we will address the denial basis before us on appeal.

B. Whether the Petitioner is Well Positioned to Advance the Proposed Endeavor

Turning to the Director's stated basis for denial, the Director concluded that the record does not establish the Petitioner is well positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong. On appeal, the Petitioner asserts that his "experience and expertise in the field

presented work, and record of successful business endeavors position him well to advance his proposed endeavor, and USCIS erred in finding otherwise." The Petitioner also submits on appeal copies of documents relating to taxes filed with the U.S. Department of Treasury, Internal Revenue Service, for the 2022 calendar year; however, the Petitioner does not establish the materiality of these documents.

Dhanasar contemplates four, non-exhaustive, general factors that may demonstrate an individual is well positioned to advance a proposed endeavor: "the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals." *Matter of Dhanasar*, 26 I&N Dec. at 890.

Regarding the first factor, the record contains copies of diplomas and academic transcripts, indicating that [redacted] in Kazakhstan, granted the Petitioner a bachelor's degree in jurisprudence in 2014, and that the [redacted] granted the Petitioner a master of laws degree in 2021. The record also contains a Graduate Certificate in Business Law that the [redacted] concurrently awarded to the Petitioner in 2021. In relevant part, the transcripts list the subject titles of the courses the Petitioner completed and the numerical grade points he received upon completion of the courses. However, the academic transcripts—and the remainder of the record—do not elaborate on the content of the courses beyond the subject titles, or otherwise provide sufficient information to establish what the completion of the respective courses may have prepared the Petitioner to do and how well positioned he may be to do it. *See id.*

The record also contains copies of various certificates, indicating that the Petitioner completed English language courses and a Program on Terrorism and Security Studies offered by the [redacted] in Germany. However, the record does not establish how the Petitioner's completion of English language courses and the Program on Terrorism and Security Studies may be material to his proposed endeavor to "manage my own United States cargo transportation company." Therefore, the record does not establish how the certificates relate to whether the Petitioner may be well positioned to advance the proposed endeavor. *See id.*

The record contains a copy of the Petitioner's résumé, which indicates he worked in various prosecutor's offices in Kazakhstan between 2015 and 2019, and that he was the "owner-director" of a minimarket in Kazakhstan between July 2014 and July 2015. The résumé does not elaborate on the Petitioner's duties as the minimarket "owner-director," although it summarizes his responsibilities at the various prosecutor's offices as "[e]nsuring the supervision of legality in socio-economic sphere including tax, transportation and labor law" and generally "protecting the social and economic interests of the region." The record does not establish how the Petitioner's work for various prosecutor's offices and as the "owner-director" of a minimarket in Kazakhstan are related or similar to his proposed endeavor to "manage my own United States cargo transportation company." Therefore, the record does not establish how the Petitioner's employment experience relates to whether he may be well positioned to advance the proposed endeavor. *See id.*

Regarding the second factor, we acknowledge that the record contains a business plan, discussed above. However, the plan provides minimal probative information regarding the Petitioner's model or plan for future activities. Instead, the document primarily provides generalized information

regarding the transportation services industry, and it summarizes the Petitioner's qualifications and experience, which, as addressed above, bear minimal relation to the proposed endeavor. We note in particular that, although the business plan acknowledges that there are "other [redacted] movers," it omits an analysis of existing competitors providing the same or similar services the Petitioner's company would offer, competing with its locations in [redacted] and [redacted] California, in addition to existing competitors in [redacted] Massachusetts, [redacted] Texas, and [redacted] Illinois. Considered as a whole, the business plan provides limited, partial, and selective information regarding the extent to which the Petitioner may be well positioned to advance the proposed endeavor. *See id.*

Regarding the third factor, the record contains limited, probative information regarding progress towards achieving the proposed endeavor. We acknowledge that the record contains a copy of the Petitioner's company's articles of organization filed with the California Secretary of State in [redacted] 2022 and a household movers permit issued by the State of California, Department of Consumer Affairs, Bureau of Household Goods and Services to the Petitioner's company in [redacted] 2022. The record also contains copies of contracts with various vendors for vague goods and services that appear to include access to a virtual mailbox, access to "up to 2 trucks" for unspecified purposes, and the services of a third-party customer referral provider. Although the record contains a half-page letter from [redacted], located in [redacted] California, the signatory is identified therein only as "Secretary," casting doubt on the identity of the signatory, which undermines the reliability and sufficiency of the letter and of the remainder of the record. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (providing that doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition). Considered as a whole, the record provides insufficient information regarding the extent to which the Petitioner has made progress toward achieving the proposed endeavor in order to assess how well positioned the Petitioner would be to advance the proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

Finally, the record contains limited information regarding the interest of potential customers, users, investors, or other relevant entities or individuals. The record contains a half-page letter from the owner of [redacted] located in [redacted] California, who asserts, "It would be my pleasure to partner with [the Petitioner], who would serve as freight carrier, allowing me to safely deliver . . . various goods including household stuff." However, the letter from [redacted] does not elaborate on its potential partnership with the Petitioner's company with sufficient information to assess how well positioned the Petitioner may be to advance the proposed endeavor as a result of one client or customer with a generalized "need [for] local moving companies" to relocate "household stuff." *See id.*

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. As a separate basis of ineligibility, because the record does not establish the Petitioner is well positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong, he is not eligible for a national interest waiver. *See id.* We reserve our opinion regarding whether the record satisfies the third *Dhanasar* prong. *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"); *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, in addition to the requisite second prong, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.