U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34832089

Date: JAN. 03, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an exercise trainer and group fitness instructor, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability as well as a national interest waiver of the job offer requirement attached to this 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 did not establish eligibility as an individual of exceptional ability or for a 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[3] 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.

Id. at 889.

II. ANALYSIS

A. EB-2 Visa Classification

The Director determined that the Petitioner does not qualify as an individual of exceptional ability. Because the evidence in the record does not establish by a preponderance of the evidence that the Petitioner is eligible for, or otherwise merits, a national interest waiver as a matter of discretion, we will reserve the issue of whether he qualifies for EB-2 classification as an individual of exceptional ability for future consideration should the need arise.[4]

B. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." *Id.* at 889. 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. *Id.* The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.

The Director concluded that the Petitioner failed to establish that the proposed endeavor has substantial merit because the Petitioner materially changed the proposed endeavor in his response to the request for evidence (RFE). The Petitioner initially indicated that he would seek employment as an exercise trainer and group fitness instructor. He described his job as follows: "Instruct or coach groups or

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

[4] *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").

individual (sic) in exercise activities for the primary purpose of personal fitness." However, in response to the RFE, the Petitioner submitted a May 2024 business plan indicating that he will establish a company focusing on providing and promoting health and wellness. Hence, the Petitioner did not initially indicate any intention to own and operate a business as the proposed endeavor. The Petitioner must establish all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Further, a petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1988). *Izummi* further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we agree with the Director's determination that the Petitioner materially changed the proposed endeavor to opening, owning, and operating his own business. Thus, we will only address his initial proposed endeavor of instructing or coaching groups or individuals in exercise activities for the primary purpose of personal fitness. Consequently, we will not consider the Petitioner's materially changed proposed endeavor of opening, owning, and operating his own business. Nevertheless, as it relates to substantial merit, the endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. Although the Director found the proposed endeavor did not possess substantial merit, the Petitioner provided several articles and industry reports on the fitness industry and its importance in stemming obesity and other medical conditions, thus reflecting that the endeavor falls within one or more of the areas contemplated by *Dhanasar*. Therefore, we determine that the initial proposed endeavor has substantial merit.

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 articles and industry reports on health and fitness topics as well as the economic contributions of immigrant entrepreneurs, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing services as an exercise trainer and group fitness instructor. 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 presented an expert opinion letter from Dr. [redacted] Lecturer, [redacted] who stated that the Petitioner's initial proposed endeavor has national importance. However, the letter discusses the importance of personal trainers rather than focusing on the national importance of the Petitioner's specific, proposed endeavor. In addition, the letter does not explain how the Petitioner's particular services would have broader implications for our country. 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 plans to address physical health, promote mental and emotional balance, design personalized exercise programs and group classes for special populations. However, the Petitioner did not demonstrate how his services largely influence the field and rises to the level of national

importance. While we acknowledge that it may be reasonable to conclude that exercise trainers and group fitness instructors can develop wellness programs that may prevent obesity and promote healthy nutrition and lifestyle habits, we agree with the Director in concluding that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his client base to impact the field of physical fitness or the U.S. physical fitness and health industry more broadly at a level commensurate with 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 clients, to impact the field or the U.S. economy more broadly at a level commensurate with national importance. Given the ubiquitous nature of the position, a single exercise trainer/group fitness instructor does not usually have national importance.

The Petitioner did not show how his endeavor as an exercise trainer and group fitness instructor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to his particular future work, the record does not show any benefits to the U.S. regional or national economy resulting from his services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Further, while the Petitioner has provided articles and industry reports discussing the importance of physical fitness, this documentation does not discuss the Petitioner's endeavor, nor does it establish how the benefits provided to his clients would result in broader national implications and generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, while we acknowledge the sole expert opinion, the issue here is whether the Petitioner has demonstrated the national importance of his proposed endeavor. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l,* 19 I&N Dec. 791, 795 (Comm'r. 1988). Moreover, expert opinions are relied upon in determining whether an individual is well positioned to advance the proposed endeavor and not in demonstrating the national importance of the proposed endeavor. As such, the Petitioner has not established that his proposed endeavor reaches a level of national importance to warrant a waiver of the job offer requirement.[5]

ORDER: The appeal is dismissed.

[5] As the Petitioner has not established the national importance of his proposed endeavor, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs. *Supra at INS v. Bagamasbad.*