U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29277235

Date: JAN. 10, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a recent law school graduate and former police officer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner qualified as an advanced degree professional, he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish 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[2], 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

[1] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

[2] *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).

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

The Petitioner proposes to practice law in the United States.[3] The Petitioner states that his goal is to help people protect their rights and freedoms by "representing clients in court, advocating for policy changes, and working with communities to promote awareness of their rights."

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889.

The Director concluded that the Petitioner's proposed endeavor does not have substantial merit. Evidence in the record establishes that the Petitioner's proposed endeavor has substantial merit, and we withdraw the Director's determination to the contrary.

Turning to the national importance of his endeavor, the Director concluded that the Petitioner did not establish that his proposed endeavor has national importance. On appeal, the Petitioner contends that the Director did not give due regard to the evidence submitted, including a letter of recommendation from the Head of the Special Training Department of the Police Department of the [redacted] region and his personal statements.

Regarding the Petitioner's letter of recommendation, the author praises the Petitioner's abilities in the legal sector, and the personal attributes that make him an asset to the workplace. While the recommendation letter evidences the high regard the Petitioner's professional acquaintance has for the Petitioner and his work, the author does not offer persuasive detail concerning the national importance of the Petitioner's proposed endeavor. As to the Petitioner's statements, his initial statement focused on the shortage of lawyers in the United States; however, the national shortage of lawyers is not, in and of itself, sufficient to establish the national importance of the Petitioner's endeavor. Further, the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Moreover, the Petitioner's statement submitted in response to the Director's request for evidence relies, in part, on his experience in the legal sector to establish the national importance of his proposed endeavor. However, the Petitioner's expertise and record of success in previous positions are considerations under *Dhanasar's* second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of his proposed work.

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. Although the Petitioner states that he intends to work as a lawyer, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that 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. Here, we conclude that the record does not show that the Petitioner's proposed endeavor stands

[3] The Petitioner also has a job offer to be an immigration paralegal at his counsel's firm.

to sufficiently extend beyond his future clients and employer(s) to impact the legal industry more broadly at a level commensurate with national importance.

The Petitioner also did not show that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show any benefits to the U.S. regional or national economy resulting from his lawyer position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the remaining prongs, and we hereby reserve them.[4] The burden of proof is on the Petitioner to establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[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"); *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).