U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29338294

Date: JAN. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in healthcare and life sciences management, seeks classification as a member of the professions holding an advanced degree. 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. 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 Texas Service Center denied the petition, concluding that the Petitioner qualifies as an advanced degree professional but that the record did not establish that a waiver of the job offer requirement is 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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility for the EB-2 classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *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).

- 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.

II. ANALYSIS

The Director found that the Petitioner established eligibility for the EB-2 classification as an advanced degree professional, based upon the Petitioner's master's of business administration degree from [redacted]. The Director also found that the Petitioner established the substantial merit of the proposed endeavor. However, the Director found that the Petitioner did not demonstrate the national importance of the proposed endeavor, that he is well-positioned to advance it, or that, on balance, waiving the job offer requirement would benefit the United States. On appeal, the Petitioner submits a brief in which he asserts that he has established eligibility for a national interest waiver.

As to the proposed endeavor, the Petitioner states:

> I seek to be admitted as an entrepreneur, founder and executive director of a health and life science learning and skill development start-up, [redacted]. . . . Our mission is to equip, empower, and energize the life science workforce through access to relevant knowledge, skills and tools needed to power innovation for humanity.

In response to the Director's request for evidence (RFE), the Petitioner clarified that the company intends to be "a leading life science content library" and that he hopes that it will "ultimately become an integral part of the life science workforce learning, training, [and] onboarding" and be a "life-long knowledge and skill development resource." The Petitioner states that the company will offer a digital subscription-based platform for individuals in the life sciences occupations to access content to learn and develop knowledge and skills related to their industry and occupation.

As to the first *Dhanasar* prong, the Director found that the Petitioner's proposed endeavor has substantial merit. However, as to the national importance requirement, the Director found that the evidence did not demonstrate the potential prospective impact of the endeavor beyond the company and its clients. The Director also concluded that the record did not demonstrate that the Petitioner's projects have national or global implications in the field, the immediate potential to employ U.S. workers or other substantial positive economic effects, nor that the proposed endeavor will broadly enhance societal welfare or cultural or artistic enrichment.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

On appeal, the Petitioner asserts that the Director did not follow the USCIS policy guidance relating to specific evidentiary considerations for entrepreneurs.[2] The Petitioner also claims that the Director did not provide a sufficient explanation for the decision's conclusions, misapplied the *Dhanasar* framework, did not consider the totality of the evidence in the record, and used an incorrect evidentiary standard. The Petitioner contends that the evidence, if considered in its totality, does demonstrate eligibility for a national interest waiver.

The Petitioner also objects to some of the specific language of the Director's decision, stating that it is "laden with typos and made-up evidentiary standards" and therefore difficult to understand. The Petitioner cites as an example of this the following language from the decision: "[t]he proposed endeavor and internet industry reports fail to demonstrate the potential prospective impact of the petitioner's projects beyond the company initiatives with [redacted] and [its] clients, not the United States." The Petitioner states that this language is confusing and erroneous. We agree that the language the Petitioner cites here is not clear, and the decision is brief in some of its analysis. Nevertheless, while the Director's discussion could have been more detailed, we conclude that the decision is sufficient and specific enough to provide the Petitioner a fair opportunity to contest the decision and the AAO an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994). Moreover, we conduct a de novo review and have reviewed the record in full.

In appealing the Director's findings related to whether the record demonstrates the national importance of the proposed endeavor, the Petitioner asserts that there is a talent shortage in the life sciences industry and that the endeavor will address this shortage by providing training to workers. The Petitioner also claims that the company will enhance the life sciences education and skill development infrastructure, will enhance lifelong learning within the life sciences workforce, will bridge the knowledge and skills gap between academia and industry, facilitate collaboration, and help increase pandemic preparedness.

The Petitioner submitted articles to support the claim that there is a shortage of workers in the life sciences sector. The articles discuss the challenges in hiring sufficient workers to address demand in the life sciences industry and the problem of a "skill mismatch" between what workers in the industry are trained for and what company's needs are. The Petitioner also submitted an article stating that some large companies such as Pfizer and Sanofi are seeking to train (or "upskill") their current workers to help address the shortage.

While the record does demonstrate the hiring challenges in the life sciences industry as the Petitioner claims, there is not sufficient documentary evidence in the record to demonstrate that the Petitioner's proposed endeavor has the potential to impact this issue at a level commensurate with 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, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. These articles do not discuss the Petitioner's proposed endeavor, its potential impact, or otherwise demonstrate that the endeavor stands to have an impact on these industry hiring challenges that would rise to the level of national importance.

[2] *See generally* 6 *USCIS Policy Manual* F.5(D)(4), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

The Petitioner's personal statement and the business plan claim that the company will alleviate this challenge in the industry by providing training opportunities for the life sciences workforce. However, we conclude that the record does not contain sufficient objective, documentary evidence to establish the endeavor's potential prospective impact on this challenge. The business plan describes the company's proposed services, its revenue model, the market size for learning and development companies in the life sciences industry, potential competitors, and what the company sees as its competitive advantage. As far as the potential impact of the proposed endeavor on the industry, the plan includes an appendix which projects that the number of users on the platform will exceed 1 million by 2030. However, the plan does not provide an explanation to support this assumption. Although the Petitioner asserts that the company will improve the "life science education and skill development infrastructure" and will "enhance lifelong learning within the life science workforce," the record does not contain sufficient documentary evidence to demonstrate that the company stands to do so at a level that rises to national importance.

The Petitioner next asserts that his endeavor has the significant potential to hire U.S. workers, based upon his business plan and past hiring. The Petitioner also claims that the Director did not use the correct standard in considering the endeavor's potential for job creation, because the decision states that the record does not demonstrate the endeavor's "immediate" potential to employ U.S. workers. We agree that, in evaluating national importance based upon job creation, *Matter of Dhanasar* does not require a showing of "immediate" potential to employ U.S. workers, and we withdraw the Director's decision inasmuch as it relies on that finding. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

Nevertheless, we conclude that the Petitioner has not established that the proposed endeavor has the significant potential to employ U.S. workers at a scale that would be commensurate with national importance. Although the business plan projects that the company will earn over $100 million in revenue and employ 95 U.S. workers by 2030, the plan does not provide a clear basis for these projections. These numbers appear to be based upon the assumption in the appendix that the platform will exceed 1 million users by 2030, but again the plan does not provide an explanation for projecting this number of users. As such, we cannot assess whether the business plan's stated revenue projections and job creation estimates are credible, and we conclude that the Petitioner has not met his burden to establish that the proposed endeavor has significant potential to employ U.S. workers or stands to have substantial positive economic effects as contemplated by *Matter of Dhanasar*. *Id.*

Finally, the Petitioner contends that his endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives. Specifically, the Petitioner states that he provided evidence of the Biden administration's effort to improve the advanced manufacturing workforce and evidence that New York City and Massachusetts have invested money in the life sciences industry, including in workforce training and development. The Petitioner contends that his proposed endeavor aligns with these initiatives and this demonstrates that these efforts are nationally important. Again, the Petitioner's claim here relies on the importance of the field in which he will work. Although the Petitioner's endeavor relates to training workers in an important industry, the record does not demonstrate that the potential impact of the endeavor on the life sciences industry, or life sciences education, rises to the level of national importance.

Upon de novo review, we conclude that the Petitioner has not established the national importance of the proposed endeavor. Because the documentation in the record does not establish national importance as required by the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility under the first prong, we will not address those arguments here.[3] We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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); *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 the applicant is otherwise ineligible).

III. CONCLUSION

Because the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework related to national importance, we conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[3] Many of the Petitioner's specific claims regarding the insufficiency of the Director's decision, such as those that relate to the USCIS policy guidance on specific evidentiary considerations for entrepreneurs, primarily are relevant to the second prong of the *Dhanasar* framework—whether the Petitioner is well-positioned to advance the proposed endeavor. For example, the Petitioner asserts that the Director did not sufficiently consider that he has established a business entity, that he has relevant education, that he has attempted to be accepted into an accelerator program, and that the company has received a grant to hire an intern. *See generally* 6 *USCIS Policy Manual* F.5(D)(4), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5. Because the Petitioner has not overcome the Director's denial as to the first prong, we need not address those arguments here.