U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29535208

Date: JAN. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a training and development specialist, 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 the underlying immigrant classification as an individual of exceptional ability and for 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.

I. LAW

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[2], grant a national interest waiver if:

- 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.

[1] The Petitioner did not claim eligibility as a member of the professions holding an advanced degree.

[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).

II. ANALYSIS

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. At initial filing, the Petitioner stated:

> My proposed effort is to open a Consulting, Advisory, and Training Company in Financial Management and the development of educational content and technologies, aimed, a priori, to serve Consulting Companies, Banks, Financial Institutions, and Credit Companies, and that will be in the [redacted] (FL) region. Its legal nature will be LLC. This company will generate direct jobs and, above all, indirect jobs, which will impact the economy. Furthermore, my intention is to disseminate my knowledge acquired in these 12 years of experience training future professionals and thus providing to be substantial merit and of national importance.

The Petitioner also provided a business plan for his proposed company. In response to the Director's request for evidence, the Petitioner submitted a revised business plan, an opinion letter, and claimed:

> My proposed endeavor has substantial merit and national importance. My proposed endeavor is to open a Financial Management Consulting, Advisory, and Training, and educational content and technology development company . . . .
>
> The future company will focus on offering short-term courses and seminars for management and professional development. Training is provided through public courses or training programs for employers, and courses can be customized. Instruction can be provided at a company's training facilities, clients' premises, or educational institutions, in one's workplace, at home, and via TV or the internet.
>
> The main activities of this industry are: providing managerial development training, providing professional development training, providing quality assurance training, and providing business coaching. The main products and services of this industry are: professional development and training and educational development training. The future company will be located in the [redacted] (FL, USA) region. The company will operate as a LLC focused on businesses with B2B- (Business-to-Business) type transactions.
>
> . . . .
>
> I emphasize that my real intention is to be able to start my business in the United States because I know the potential that the market offers and I know that I can meet this demand. What I need is the opportunity to put this project into practice here in the United States.

The Director concluded the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. Regarding substantial merit, the endeavor's merits 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.

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's brief mainly focuses on the importance of a wide range of topics, such as the global educational technology market, professional development training, educational training, industry performance, educational technology services and business coaching, establishments in the United States, and the national importance of entrepreneurs, critical and emerging technologies, and STEM (sciences, technology, engineering, and mathematics), the Petitioner must demonstrate the national importance of his specific, proposed endeavor of his consulting, advisory, and training company rather than the importance of the overall topics, fields, or industries.[3] 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.

Furthermore, with respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance.[4] Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance.[5] On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance.[6]

Moreover, the Petitioner contends that he presented an expert opinion letter from J-S-S- who found his proposed endeavor to have national importance. The letter, however, makes the same arguments, discussed above, relating to the importance of "comprehensive corporate training and development programs" rather than focusing on the national importance of the Petitioner's company. Further, the letter does not explain how the Petitioner's services and business 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 did not demonstrate how his proposed endeavor largely influences the field and rises 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

[3] The Petitioner's arguments and associated evidence relate more to the substantial merit aspect of the proposed endeavor rather than the national importance part.
[4] *See generally* 5 USCIS Policy Manual D.2, https://www.uscis.gov/policymanual.
[5] *Id.*
[6] *Id.*

would not impact his field more broadly. *Id.* at 893. Likewise, the record does not show through supporting documentation how his business stands to sufficiently extend beyond prospective clients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

In addition, the Petitioner asserts "how [his] past experience and skills make [him] particularly well-suited to provide a range of services in [his] future enterprise." However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

Finally, the Petitioner did not demonstrate how his business plan's claimed revenue and employment projections, even if credible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although the business plan forecasts cumulative revenue to almost $3M after five years, the Petitioner did not establish that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, although the business plan claims the creation of eight positions for the company, the Petitioner did not demonstrate that such future staffing levels would provide substantial economic benefits to the [redacted], Florida region or U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not show that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not establish that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

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. We also reserve a determination on the Petitioner's eligibility for the underlying immigrant classification as an individual of exceptional ability.[7]

III. CONCLUSION

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.

ORDER: The appeal is dismissed.

[7] *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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).