U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26556062

Date: JAN. 31, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and coach specialist, seeks classification as an individual of exceptional ability. *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 Texas Service Center denied the petition, concluding that although the Petitioner established that he qualifies as an individual of exceptional ability, he did not demonstrate 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 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. Next, a petitioner must then demonstrate they merit 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 USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

[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 concluded that the Petitioner qualifies as an individual of exceptional ability. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. 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.

In an impact analysis report submitted with the petition, the Petitioner stated that he is in the process of opening a new company, [redacted], which will train "entrepreneurs, executives and managers to be more effective and to become socially responsible leaders." He further stated:

> The Company will offer seminars on leadership training, interpersonal intelligence, and effective communication. While anyone will be welcome to take the courses, [the Petitioner] will target the large Brazilian community in [redacted], where the company will be based. The touchstone for the training will be the ideas of [redacted], one of the pioneers of the self-improvement movement whose books and articles have been changing readers' lives for more than a century. [redacted] is a Greek word used in the [redacted]
>
> The curriculum to be developed by [the Petitioner] will be geared toward entrepreneurs, people in upper tiers of management, business executives, directors, supervisors, and anyone who wants to become a more effective leader.

In addition to this statement, the Petitioner submitted a business plan for his proposed company, as well as copies of his academic credentials, certificates of recognition, and letters of recommendation.

The Director determined that the Petitioner's initial filing did not establish that the proposed endeavor had substantial merit or national importance. The Director observed that the Petitioner did not describe the endeavor with specificity in order to make such a determination, and noted that the evidence of record did not demonstrate that his proposed endeavor would have potential prospect impact, significant potential to employ U.S. workers, or other substantial positive economic effects. As a result, the Director requested a detailed description of the Petitioner's proposed endeavor in order to evaluate his request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner reiterated that his proposed endeavor was to offer training in personal development, leadership and communication, noting that he would offer the following services:

1. Design and/or conduct training and development programs.
2. Improve individual skills or organizational performance.
3. Boost the company's productivity.
4. Create and implement strategies to increase productivity.

He also submitted a definitive statement, where he claimed that his services will "develop strategic partnerships, identify specific individual needs and implement commercial and marketing strategies." He further stated that his services "can completely change the way the training and development market is well positioned and can expand wealth in the US. My proposed venture will make this investment a reality, resulting in greater economic contribution to the United States." The Petitioner also submitted copies of articles relating to the importance of business development training and entrepreneurialism in the United States.

In denying the petition, the Director determined that the proposed endeavor had substantial merit, but concluded the Petitioner provided insufficient evidence to establish the proposed endeavor's national importance. The Director determined that the Petitioner had not shown that his proposed endeavor had significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner asserts that he is "a revered professional for his leadership and specialized knowledge in training and development," and asserts that his "vast experience in the field will significantly contribute to the nation's economy." The Petitioner also emphasizes his qualifications as an entrepreneur and coach specialist and asserts that the evidence of record establishes the national importance of the proposed endeavor.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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.

We agree with the Director that the Petitioner has not demonstrated that the proposed endeavor is of national importance. The Petitioner indicated his intent to work as an entrepreneur in the United States, noting that he will open his own company and work as a coach specialist to provide training and development services to entrepreneurs, managers, and executives. He submitted a business plan for his proposed company, which he described as a business consulting service, and maintains that his proposed endeavor to establish and provide services through this company has national importance because it will impact entrepreneurialism in the United States.

Throughout the record and again on appeal, the Petitioner points to his background, education, and experience in his field.[2] The Petitioner also provided several letters of support that discuss his entrepreneurship experience and professional accomplishments as a coach specialist in Brazil. The Petitioner's knowledge, skills, and experience in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See id* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under the second consideration of *Dhanasar*'s first prong. 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. The evidence does not suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner's experience will reach beyond benefitting his own company and clients or have broader implications within the field of business development and training.

The Petitioner claims that his proposed endeavor has national importance because promoting entrepreneurship through training and development will benefit commercial markets, foreign investment activities, and U.S. business and commercial sectors, and submitted articles in support of this assertion. Although the submitted articles discuss the achievements of immigrants as entrepreneurs and the shortage of quality trainers and skilled workforce, they are not specific to the Petitioner's field or the location of his proposed endeavor. When 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 "the specific endeavor that the foreign national proposes to undertake." *See id.* at 889. Much of the Petitioner's evidence relates to the power and impact of entrepreneurship generally, rather than his specific proposed endeavor. Even considering the articles in the totality of circumstances, we still conclude that they do not support a finding that his specific proposed endeavor has national importance.

Furthermore, 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 "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner has not established how his individual employment as a coach specialist and owner of his own company would affect the U.S. economy more broadly consistent with national importance.

We also reviewed the Petitioner's business plan, which anticipates that the company will employ 12 employees in its first five years. Regarding financial predictions, the Petitioner's business plan predicts total revenue of $1.2 million by its fifth year of operations in the [redacted] area. The Petitioner, however, did not sufficiently describe the origin or basis for these projections and, even if he had, they would not establish the national importance of the proposed endeavor.[3] As we explained in *Dhanasar*, "[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." *See id.* at 890. Here, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence

[2] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

[3] The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

regarding any projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.*

While the Petitioner's statements reflect his intention to provide valuable training and development services for his clients through his company, he has not offered sufficient information and evidence to identify his proposed endeavor with specificity or otherwise 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. *See id.* at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his clientele to impact the U.S. economy more broadly at a level commensurate with national importance.

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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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).

III. CONCLUSION

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

ORDER: The appeal is dismissed.