U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35214731

Date: JAN. 31, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a CEO, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner was eligible for a national interest waiver of the job offer requirement. The matter is now before us on appeal pursuant to 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.

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

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

Id.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of 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. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

II. ANALYSIS

The Petitioner intends to serve as the CEO of a Florida-based company that will provide condominium management software. The Petitioner intends to expand the use of his property management application, already in use in Brazil, to various markets in the United States.

The Director found the Petitioner qualified for underlying EB-2 classification as a member of the professions holding an advanced degree. However, the Director determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification from a U.S. employer. Specifically, the Director concluded that the national importance of the endeavor had not been demonstrated under prong one, that the Petitioner was not well-positioned to advance the endeavor under prong two, and that the Petitioner had not shown that a waiver of the job offer requirement would be beneficial as required by prong three. We agree the Petitioner has not established the national importance of the endeavor, as required under the first prong of *Dhanasar*.

A. The Petitioner Has Not Demonstrated that the Endeavor Has National Importance

On appeal, the Petitioner argues he has satisfied prong one of the *Dhanasar* framework. He argues that the Director's denial mischaracterized the prospective national importance in considering only the creation of three direct and 11 indirect jobs. The Petitioner argues that national importance was instead demonstrated via the projected millions of dollars in revenue, which would in turn account for 361 new jobs. In addition, the proposed endeavor has benefits to include innovation in the technology sector, knowledge transfers, assistance to economically distressed areas, and the promotion of the essential services sector. The Petitioner also takes issue with the Director's decision to discount the international sales included in the financial projections, noting that foreign direct investment is critical to the U.S. economy. He contends that the impacts of the proposed endeavor are "certainly national in scope" and will spread across the nation, having an impact in multiple states as the demand for smart communities expands.

In support of these contentions, the Petitioner has submitted evidence including, but not limited to: a business plan covering five years of operations; letters of support from construction and property management professionals; documentation showing his educational and professional experience; and promotional material for his project management software solution. The Petitioner stresses that the proposed endeavor is likely to be successful given his extensive business background, and particularly considering its existing success in Brazil.

The Petitioner has not satisfied the first prong of the *Dhanasar* framework requiring a proposed endeavor to be of national importance. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the proposed endeavor. *Id.* at 889. An endeavor may have an impact rising to the level of national importance "because it has national or even global implications within a field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* An endeavor may also have other broader implications that make it nationally important, such as the "significant potential to employ U.S. workers" or other "substantial positive economic effects." *Id.* at 890.

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, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clientele to impact the property management software industry or otherwise impact economic initiatives more broadly at a level commensurate with national importance. Furthermore, 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. He has not shown that the company's future staffing levels, business activity, associated tax revenue, and financial initiatives stand to provide substantial economic benefits in Florida or in the United States generally.

Although the evidence reflects the Petitioner's intention to provide valuable services for the property management companies and building tenants his application would serve, his contentions regarding the broader impacts are insufficiently supported and attenuated from the actual endeavor. These listed benefits are not the direct consequence of the Petitioner's endeavor; rather, they rely on a series of assumptions that the use of his application will result in consequential improvements to property management, which will in turn increase profitability and operations and safeguard property values. The Petitioner has not provided us with sufficient evidence that his endeavor has the potential to be the catalyst for such broad change.

Similarly, while the Petitioner characterizes the application as innovative, and argues that it was groundbreaking in Brazil, he has not provided evidence showing that it is similarly innovative compared to the property management software industry in the United States. Rather, the applicant provides evidence that the property management software industry in the United States, currently worth billions of dollars, is embracing innovation at the startup level as well as at established enterprises. The Petitioner has not shown by a preponderance of the evidence that the application will offer the type of "improved manufacturing processes" or similar outcomes in the United States that would be considered nationally important to the field. *Id.* at 889.

The Petitioner has also not demonstrated by the preponderance of the evidence that the proposed endeavor would have a substantial economic benefit. While the business plan outlines the intent to hire various employees and contractors, and to reach several million dollars in revenue by year five, the support for these figures has not been provided. The Petitioner notes that he has 5,000 clients after running a similar endeavor for six years in Brazil. However, we have not been provided with financial filings showing the existing company's current value or revenue levels. The Petitioner has provided us with a simulation of the possible impacts from the endeavor, where he projects that he will have 7,920 U.S. users within one

year and 72,840 users by year 5. The Petitioner argues that this will create 21 million dollars in accompanying services, as users book appointments such as massages and hair care through the application. He argues that this is equivalent to several hundred new jobs. However, the Petitioner has not explained how he will obtain this number of users. We also note that the economic impacts are valued by the cost of the secondary services provided that would be booked through the Petitioner's application. However, the Petitioner has not explained why revenue from other businesses should be attributed to his proposed endeavor; we have been given an insufficient basis to determine that his application would create demand for services, and therefore economic benefits, from third party businesses that would otherwise not exist.

Ultimately, the record does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Although the Petitioner has highlighted the importance of good property management and its accompanying positive benefits, he has not shown that the business services performed by the company would represent a significant share of the property management software market or otherwise have a national impact.[2]

Because the record does not establish the national importance of the proposed endeavor, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve opinion on whether the Petitioner could satisfy the third prong to qualify for a national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

The Petitioner has not shown that the proposed endeavor is of national importance. Because he has not met the first prong of the *Dhanasar* analytical framework, we find 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.

[2] The Petitioner argues that this impact will be made in economically distressed areas. However, beyond a broad assertion that the company "will take into account distressed areas" in future expansion, there is no indication of how the proposed endeavor would create economic benefits in distressed areas.