U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31497761

Date: JUL. 1, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in trade finance and operations management, 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 the record did not establish that he is eligible for a waiver of the job offer requirement in the national interest. 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. 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,[1] grant a national interest waiver if the petitioner demonstrates that:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

Id.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner previously stated that he plans to work as a general and operations manager for his own trade finance and operations management consulting company, and he indicated in his business plan that the company "will cater to small and medium-sized companies in the U.S. It will provide consulting and advisory services related to international trade finance to the companies. The company will help businesses manage risk, maintain cash flow, support, exports, facilitate trade, and build confidence with suppliers and customers. The primary services provided by the company are international trade consulting and advisory services, [o]perations process optimization, [t]raining courses related to trade finance and workshops. It will help clients with document preparation and review to ensure compliance with documentary credit received by the client. It will help them in their risk assessment. It will help identify and assess the potential risks associated with a trade finance deal. The company will do a complete financial analysis which would involve analyzing the financial viability of a trade finance deal and recommending suitable financing options. The company will also assist its client in deal structuring. It will structure the trade finance deal to best suit the needs of the business and the lender. Under the training services, it will provide its clients with training in trade finance methods and regulatory requirements, local and international, that impact clients' export businesses."

In addition to the business plan, the record includes, but is not limited to, articles and industry reports about operations managers and the role of immigrants as entrepreneurs, and information from O*NET OnLine and the U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics related to general and operations managers. Lastly, the record includes letters of recommendation, education records, training certificates, employer letters, a resume, and immigration records.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor.[2] The Director acknowledged the submission by the Petitioner of articles, industry reports, and a business plan, but found that these were not sufficient to

[2] We note that the Director did not determine whether the proposed endeavor has substantial merit. As the Petitioner has not established national importance, we decline to reach and hereby reserve the appellate arguments regarding substantial merit. *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).

show the proposed endeavor has national importance. Specifically, the Director stated that the evidence addressed the occupation in general, rather than showing the prospective impact the proposed endeavor would have. Additionally, the Director found that the Petitioner did not show the proposed endeavor sufficiently extends beyond the organization and its clients to impact the industry or field more broadly. Finally, the Director noted the Petitioner did not provide sufficient evidence of the proposed endeavor's potential prospective impact, including broader implications, or national or global implications within the field; significant potential to employ U.S. workers; substantial economic effects, particularly in an economically depressed field; broad enhancement of societal welfare; or broad enhancement of cultural or artistic enrichment. Therefore, the Director concluded that the Petitioner did not establish the proposed endeavor is of national importance.

On appeal, the Petitioner argues that the Director erroneously imposed a stricter standard of proof. With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner does not specifically identify statements in the Director's decision applying a higher standard of proof or imposing novel substantive and evidentiary requirements beyond those set forth in the *Dhanasar* framework.

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. While the Petitioner's statements reflect his intention to provide trade finance and operations management consulting services to his company's future clients, 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 the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field, the trade finance and operations management consulting industry, or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner asserts that the Director did not give due regard to his business plan, resume, evidence of his work in the field, letters of recommendation, and industry reports and articles. The Petitioner's business plan includes industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company will employ 10 personnel in year one, 13 in year two, 20 in year three, 22 in in year four, and 31 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while his plan offers revenue projections of $488,500 in year one, $760,000 in year two, $1,758,000 in year three, $2,155,600 in year four, and $3,535,500 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

The Petitioner mentions that he has theoretical experience learned through his bachelor's degree, he has over 17 years of experience in the business field, where he has developed significant experience in business development and business operations, and he is currently working as a lead trade services professor where he has gained experience in the trade and finance sectors. The Petitioner references several business-related positions he has held since May 2005. The record includes multiple letters of support discussing his experience working in the banking industry, as well as his education records and training certificates. The Petitioner's skills, knowledge, and prior work 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." *Id.* at 890. The first prong of the *Dhanasar* framework, however, focuses on the proposed endeavor and not on the Petitioner's education and prior work in the field. The national importance of the Petitioner's proposed endeavor stands separate and apart from his education, skills, and job experience.[3]

The Petitioner states that he will establish his company in [redacted] MN, a Small Business Administration HUBZone area that will fuel small business growth in historically underutilized business zones. The business plan also mentions that in year two and three, he will open branches in HUBZones in [redacted] SC and [redacted] GA respectively. He further states that his company will generate jobs for U.S. workers in these areas, improve wages and working conditions for U.S. workers, and help the local community bring investments to the region. Assuming the company operates in economically depressed areas, the Petitioner has not demonstrated that his projected number of employees would significantly affect the areas. The record indicates the proposed distribution of his 31 employees over three locations. The total proposed wages paid in year one is listed as $169,040 and $944,240 by year five. We note that some of the proposed salaries are particularly low. For instance, the business plan lists annual salaries of $5,000 for technology support, $5,000 for web/graphic designers, $2,500 for accountants, and $1,500 for lawyers. The Petitioner has not provided any analysis on how these proposed wages would impact the local economy. The record does not establish how his workers' employment in any one location would significantly benefit that geographic area.

The Petitioner next asserts that his proposed endeavor is national in scope, as his professional activities relate to a matter of national importance and impact, and it would generate ripple effects upon key commercial and business activities on behalf of the United States such as business development, sales, and U.S. companies' business functions. The Petitioner, however, has not sufficiently shown his business's purported "ripple effects" on the U.S. economy. He does not adequately explain what the impact on the national economy would be, and the record does not establish that his company would have sufficient size or scope to substantially affect the nation's economy or employment rate.

Additionally, the Petitioner refers to previously submitted evidence, which includes articles and industry reports about operations managers and the role of immigrants as entrepreneurs, and information from O*NET OnLine and the U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics, as evidence of the importance of operations managers in every type of business. He asserts that the articles demonstrate the national importance of the proposed endeavor due to its economic implications. However, the issue here is not the national importance of the field, industry,

[3] *See Dhanasar* at 890.

or profession in which the individual will work; rather we focus on the "the specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner also claims that his proposed endeavor stands to affect the national economy by "offering economic convenience and agility" to "small and medium-sized U.S. companies," "promoting growth and expansion and driving change with innovation," "stimulating the domestic job market," and generating "new jobs for American workers." The Petitioner, however, has not provided evidence demonstrating that his proposed trade finance and operations management consulting business would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of his proposed endeavor stands to offer broader implications in his field or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States.

Accordingly, the Petitioner has not shown 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. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Minnesota, South Carolina, or Georgia, or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his endeavor stands to generate jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers Minnesota, South Carolina, or Georgia, or the United States a substantial economic benefit through employment levels or business activity.

The Petitioner has not established that he meets the requisite first prong of the *Dhanasar* analytical framework. Therefore, he 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 Bagamasbad*, 429 U.S. at 25; *see also L-A-C-*, 26 I&N Dec. at 526 n.7.

ORDER: The appeal is dismissed.