U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34289516

Date: JUL. 03, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a lawyer, 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established 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 pursuant to 8 C.F.R. § 103.3.[1]

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

[1] The Petitioner's Form I-290B, Notice of Appeal or Motion, was initially assigned receipt number [redacted] On July 2, 2024, we issued correspondence notifying the Petitioner that this had been changed to the current receipt number, [redacted] This is an internal processing change only. Any further inquiry about this case should reference the current receipt number.

and Immigration Services (USCIS) may, as matter of discretion,[2] 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
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree. Accordingly, the sole issue to be addressed on appeal is whether the Petitioner has established that a waiver of job offer requirement, and thus a labor certification, would be in the national interest. While we do not discuss all evidentiary exhibits individually, we have reviewed and considered each one.

At the time of filing, the Petitioner submitted a "professional plan and statement" proposing "to consult on different areas of law, with an emphasis on tax, labor, contractual, public law, and commercial law, as well as strategic business development, foreign transactions, and transactional business in order to help companies navigate and handle any legal issues that may arise." The Petitioner noted that he would focus on supporting U.S. companies in the Brazilian market and Brazilian companies in the U.S. market. In response to a request for evidence (RFE), the Petitioner submitted a business plan indicating that he intends to serve as the chief executive officer for a new legal consulting company. The Petitioner stated that his company "will function as an invaluable guide for Brazilians seeking to undertake ventures in the U.S., as well as for Americans aspiring to invest in Brazil." In a section titled "The Petitioner's National-Level Impact," the business plan states that the company's contributions will include lowering trade barriers to the Brazilian markets, supporting the arrival of new investments in the U.S., and improving cooperation between the U.S. and Brazil.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner established the substantial merit of his proposed endeavor, but not its national importance. Specifically, the Director concluded that the record contained insufficient evidence to demonstrate that the proposed endeavor would have substantial positive economic effects, broader implications for the Petitioner's field, or other potential impacts commensurate with the national importance element of *Dhansar*'s first prong. The Director acknowledged evidence establishing the importance of the legal services industry, but noted that, in

[2] *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).

determining national importance, the relevant focus is not on the industry, field or profession in which the individual will work, but rather on the specific endeavor they propose to undertake.

On appeal, the Petitioner contends that the Director erroneously denied the petition under the preponderance of the evidence standard and instead imposed "a stricter standard of proof and consequently, the decision is against the policy and is erroneous." The Petitioner submits a brief which generally reiterates the benefits of his profession and his qualifications and contends that the previously submitted evidence in the record demonstrated that the Petitioner meets all three prongs under the *Dhanasar* framework and merits a discretionary waiver of the job offer, and thus the labor certification, in the national interest.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

The record includes media articles, government publications, and industry reports on the topics of the management consulting, tax consulting, the legal services market and industry in the United States, and the demand for skilled professionals in this field. In addition, the Petitioner provided articles and reports discussing the role of entrepreneurship in job creation and economic development in the domestic and global economy and the value of immigrants and immigrant entrepreneurs as drivers of U.S. new business growth. The record also contains information about U.S.-Brazil economic and trade relations, the financial- and tax-related complexities and risks of doing business in Brazil and Latin America, and the economic benefits of international trade and foreign direct investment in the United States. This evidence supports the Director's determination that the Petitioner's proposed work as a business owner and chief operating executive in the legal consulting services sector has substantial merit.

However, in evaluating 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" and its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. General claims about the growth of the legal services industry and the importance of trade between the United States and Brazil do not help establish that the Petitioner's specific endeavor has the potential to impact the U.S. economy, trade relations, or the legal field on a scale commensurate with national importance. Therefore, while we recognize the role of legal consultants in assisting businesses to enter new markets, minimize risks, and maximize their profitability, the Petitioner's intent to work in this field alone is not sufficient to establish the national importance of his specific proposed endeavor.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Id.* 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. USCIS will also consider evidence that a proposed endeavor will broadly enhance societal welfare, and evidence that it impacts a matter than a U.S. government entity has described as having national importance or is the subject of national initiatives.

The Petitioner provided a business plan that includes industry and market analyses, financial forecasts and projections, and a description of his legal consulting company's proposed services and staffing. The business plan projects that the company, which he intends to establish if granted lawful permanent residence in the United States, would hire 15 employees in the first five years of operations, generate cumulative revenues of $5.746 million, and pay over $890,000 in taxes by the end of its fifth year. The business plan also includes projections of indirect job creation based on the Regional Input-Output Modeling System (RIMS II) for the legal services in Florida. Based on this multiplier, the business plan projects that the new firm's direct employment of 15 workers over five years would lead to the indirect creation of 37 additional jobs.

These direct job creation and revenue projections are not supported by details showing their basis or a sufficient explanation of how they will be realized. Regardless, the record does not support that the direct creation of 15 additional jobs in this sector or the expected tax revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework. While the Petitioner submitted industry data showing that the legal services industry is a high growth sector and a significant contributor to the U.S. economy, he has not demonstrated how a business that expects to hire 15 employees and generate $5.746 million over five years will have substantial positive economic effects on this sector, which, according to a submitted overview of the industry, generates over $400 billion in revenue and employs over 1.1 million workers. The Petitioner has not shown his endeavor has significant potential to employ U.S. workers or that the specific proposed endeavor would offer a region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue.

The Petitioner maintains that the economic impact of his proposed endeavor will derive not only from his direct employment of U.S. workers and contributions of tax revenue to the U.S. economy. He contends that his proposed activities will also have significant indirect benefits resulting from the creation of new businesses in the United States, increased trade between the United States and Brazil, and creation of new revenue streams for existing U.S. companies. The Petitioner also states in his business plan that his proposed endeavor will result in widespread and substantial economic benefits throughout the United States, as it will spur job creation, increased tax revenues, increased foreign direct investment, GDP growth, and national economic development. While the Petitioner contends that his proposed endeavor will create cross-border financial initiatives between the U.S., Brazil and Latin America, he has not shown, for example, that the prospective impact of the legal services performed by his company would represent a significant share of the legal services market or offer projections on the amount of foreign direct investment likely to be generated. Here, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his business and clientele to impact his field or the industry more broadly at a level commensurate with 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 his work. Although the Petitioner's statements reflect his intention to provide valuable legal consulting services for corporate and individual clients, he has not offered sufficient information and evidence to demonstrate how the indirect economic benefits resulting from his company's legal consulting activities would rise to the level of having regional or national economic impacts. The burden is on the Petitioner to establish that the economic effects of his proposed endeavor are "substantial."

In considering the prospective economic effects of the Petitioner's proposed endeavor, we have also considered his claims regarding his past achievements as a lawyer and legal consultant. In his personal statements and appellate brief, the Petitioner has placed considerable emphasis on his academic qualifications and professional experience in international law and taxation and the fact that he is well-versed in both Brazilian and U.S. law and business environments. The record contains ample supporting documentation of his educational and employment experience including letters from his colleagues and current and former employers. While important, evidence of a petitioner's skills, expertise, and record of success generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [petitioner]" and whether they are well-positioned to advance it. *Dhanasar*, 26 I&N Dec. at 889. A determination regarding the claimed national importance of a specific proposed endeavor generally cannot be inferred based on the Petitioner's past achievements, just as it cannot be inferred based on general claims about the importance of a given field or industry.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from a professor at [redacted] USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor. In addressing the first prong of the *Dhanasar* framework, the author describes Brazil's legal system, tax system and trade relations and explains the current market challenges for foreign companies doing business in Brazil. The letter states that U.S. companies doing business or planning to do business in Brazil "would benefit from the expertise and skills" of the Petitioner, who has "extensive knowledge of the legal landscape in Brazil." The professor concludes that the Petitioner's work would be "in an area of substantial merit and national importance." However, she does not address his business plan, the specific proposed endeavor and its prospective substantial economic impact nor does she address the implications of the proposed endeavor on the larger field of legal consulting services. Rather, most of the letter's discussion of the first prong of the *Dhanasar* analysis simply provides background information about Brazil's business environment, tax framework and legal system.

For the reasons discussed, the Petitioner has not met his burden to establish that he meets the first prong of the *Dhanasar* national interest framework. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining arguments concerning eligibility under

the remaining *Dhanasar* prongs. *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 alternate 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. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.