U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31731250

Date: JULY 3, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner 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 Petitioner qualified for EB-2 classification, 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**.** On appeal, the Petitioner submits a statement and asserts that he is eligible for the benefit sought. 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.

To qualify for a national interest waiver, a petitioner must first show eligibility 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. If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish 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:

- 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] *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 Director concluded that the Petitioner did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we conclude that the Petitioner has not met the first prong of the *Dhanasar* framework and will dismiss the appeal accordingly.

The first *Dhanasar* 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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.

The Petitioner indicated in part 6 of the petition that he intends to be employed as a "Financial and Investment Analysis Specialist." The Petitioner further detailed that his proposed endeavor was to open a "Financial Consulting Business" to assist construction and agricultural companies "increase their profit margins, gain more market share, and maintain the growth of their operations." The Petitioner submitted, among other documents, offers of employment letters from a financial group and an accounting and bookkeeping company in New York.

The Director issued a request for evidence in which they requested, in part, additional evidence to establish that the Petitioner's proposed endeavor had substantial merit and national importance. The Director noted that without specific details of the Petitioner's proposed endeavor and how the Petitioner would achieve said endeavor, USCIS was unable to determine that the proposed endeavor was of national importance.[2]

In response to the Director's request, the Petitioner explained that his proposed endeavor was to develop a consulting company for agricultural and construction companies to help ensure their financial stability, resilience, and profitability for their future. In support, he provided articles and reports from governmental and private entities regarding the role of agriculture and its related businesses and asserted that the previously submitted offers of employment letters from U.S. companies, and a newly submitted letter of interest from a company in Iowa, established the viability of his proposed endeavor in the United States. He also submitted a business plan. The business plan indicated that the Petitioner would "provide financial advisory services for American agribusinesses and homebuilders with a focus on Hedge Protection strategies, to make the companies more financially stable and sound." The Petitioner did not provide further detail on the specific prospective occupation or proposed endeavor that he would focus on to illustrate the nature of the work that he would perform during his day-to-day work activities. Nor did the Petitioner provide a consistent, detailed description

[2] The Director also requested additional documentation to establish the second and third *Dhanasar* prongs.

explaining the manner through which he would prospectively deliver these services, supported by documentary evidence, as requested by the Director.

The Director denied the petition in part, determining the Petitioner did not provide evidence that would adequately demonstrate the nature of his specific endeavor. In regard to prong one of the *Dhanasar* framework, the Director determined that the Petitioner's proposed endeavor had changed in response to the Director's request for evidence. Specifically, the Director noted that with the initial filing, the Petitioner stated that he would start his own financial consulting business and work as a financial and investment analysis specialist, but in response to the Director's request for evidence, he proposed a new endeavor as director and chief consultant of a consulting company, and such a change in his proposed endeavor constituted a material change to the petitioner. As support for the Director's determination that this evidence could not be considered, the Director referenced *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications *as of the filing date of the visa petition*. The Director thus declined to consider the new proposed endeavor and instead focused on the "vagueness and lack of evidence submitted in support of the original endeavor which were insufficient to establish national importance."

On appeal, the Petitioner maintains that the documentation submitted in response to the Director's request for evidence was not a material change in the proposed endeavor. The Petitioner also asserts that the Director abused their discretion in failing to address all evidence, citing to *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) in support. The Petitioner cites to and references previously submitted material in support of his proposed endeavor and requests approval of the benefit sought.

Based on our de novo review of the record, we find that the evidence presented in response to the Director's request for evidence did not constitute a material change in the proposed endeavor. Rather, the documentation provided was to further document and explain how the Petitioner qualified for a national interest waiver based on the nature of the proposed endeavor discussed in the initial filing. In this case, the Director specifically requested documentary evidence to establish whether the Petitioner's proposed endeavor is of national importance under *Dhanasar's* first prong. When the Petitioner provided his business plan and supporting documentation in an attempt to address the Director's concerns about the plans he initially outlined when the petition was filed, the Director erred in not considering this evidence when determining the Petitioner's eligibility for a national interest waiver.

As for the Petitioner's assertion on appeal that the Director abused their discretion in failing to address all the evidence in the record, the court in *Buletini* did not suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *See Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993).

The record reflects the Director's consideration of all evidence in the totality. The Petitioner's general objections on appeal regarding his eligibility for the EB-2 classification are insufficient to overcome the conclusions the Director reached based on the evidence submitted by the Petitioner. The Petitioner

has not articulated on appeal how the Director erred in finding that the record did not demonstrate the proposed endeavor has national importance. While the Petitioner references information in previously submitted articles and reports as evidence of the national importance of his endeavor, the record does not include a plan or other indication of how the Petitioner will operate a financial consulting business that will impact business at the level of national importance contemplated under the first prong of the *Dhanasar* framework. The Petitioner has not established on appeal that his intent to apply his knowledge to his prospective clients is an activity that will have a broad impact. The record does not offer evidence sufficient to translate *how* the Petitioner's specific work for his prospective clients stands to sufficiently impact U.S. interests or the relevant consulting business more broadly at a level commensurate with national importance.

As for the Petitioner's assertion on appeal that his proposed endeavor will create jobs and contribute to the nation's economy, he has not demonstrated that the endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. *See Dhanasar* at 890. Absent probative evidence to show the realistic potential of the Petitioner's company to operate at all, it is not evident that the company will generate revenue to create jobs, to expand, or to otherwise notably impact the economy in a location in which it intends to operate. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation 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 pursuits as a consultant would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Id.* The record does not offer evidence sufficient to translate *how* the Petitioner's specific work stands to sufficiently impact U.S. interests or the relevant agricultural and construction companies beyond the individuals he would service, at a level commensurate with national importance.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *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 alternative issues on appeal where a noncitizen is otherwise ineligible). The petition will remain denied.

ORDER: The appeal is dismissed.