U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31077967

Date: JULY 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a franchise and business management consultant, 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 is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *Id.*

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32),[1] as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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[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.

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. *Id.*

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

As indicated above, the 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. The Director determined that the

[2] *See also 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).

Petitioner qualifies for the EB-2 visa classification as an individual holding an advanced degree based on his bachelor's degree in electrical engineering from [redacted] and his master's degree in business administration from [redacted], and we agree. The remaining issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of that classification's job offer requirement. We conclude that he is not.

The Petitioner proposed to work in the United States as a franchise and business management consultant through his company, [redacted] in [redacted] Florida. He stated that he plans to offer business management and financial advisory services to small and medium-sized businesses and specifically fast-food restaurants to help businesses with financial reporting and analysis, business strategic planning, mergers and acquisitions, and financing resources.

The Director determined that the Petitioner's proposed endeavor to work as an entrepreneur and a consultant has substantial merit and that the Petitioner is well positioned to advance the proposed endeavor. However, the Director concluded the Petitioner has not established that his proposed endeavor is of national importance and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

On appeal, the Petitioner contends that the Director erroneously applied the inappropriate standard of proof, erred in not considering his proposed endeavor to be of national importance, and ignored the totality of the evidence presented, including the business plan and expert opinion letters. The Petitioner also claims that the Director ignored the regulation at 20 C.F.R. § 656.3, making it legally impossible for a self-employed individual to file a labor certification on their own behalf.

Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that the petitioner's claim is "probably true." *Id.* at 376. We will examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. In this case, we have reviewed each piece of evidence, both individually and within the context of the totality of the evidence, and conclude that the Petitioner has not established by a preponderance of the evidence the national importance of his proposed endeavor for the reasons we will discuss below.

The Petitioner contends that his proposed endeavor as a franchise and business management consultant through his company, [redacted] is of national importance due to its substantial economic benefits, including job creation, support for small businesses, fostering entrepreneurship and innovation, addressing labor shortage, and government initiatives alignment. The Petitioner provided various articles and reports, which discuss the benefits of the franchise model, the impact of franchises to the economy, the importance of good management in the workplace, the role of business managers in an organization, the importance of small businesses to the U.S. economy, the small business economy, and innovation and revenue growth. The articles and industry reports also provide occupation information on management analysts, economic outlook for franchising, job outlook for management analysts, and statistics on franchising in the United States.

The articles and reports highlight the importance of franchises, small businesses, and management analysts. However, 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 specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. As such, the Petitioner must demonstrate by a preponderance of the evidence that his proposed endeavor to work as a franchise and business management consultant through his company, [redacted] and provide business management and financial advisory services to businesses - is of national importance.

In *Dhanasar*, we indicated that we look for broader implications of the proposed endeavor and that an undertaking may have national importance, for example, because it has national or even global implications within a particular field. *See id.* at 889. The articles and reports support that creation of franchised businesses has a positive impact on the United States and the local communities that they operate in. The articles and reports also indicate that small businesses constitute a major force in the U.S. economy and create jobs, spark innovation, and provide opportunities for many individuals to achieve financial success and independence. However, the articles and reports do not directly address the Petitioner's specific proposed undertaking and do not adequately explain how his proposed endeavor to provide business management and financial advisory services to businesses through his company offers benefits that extend beyond his company and its clients to impact the field of business management or the U.S. economy more broadly. Additionally, while the Petitioner's statements reflect his intention to provide business management and financial advisory services for his company's clients, he has not provided sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. Without sufficient documentary evidence of its broader impact, the Petitioner's proposed endeavor does not meet the national importance element of the first prong of the *Dhanasar* framework.

In addition, the Petitioner claims that his proposed endeavor has the potential to significantly impact matters that a government entity has described as having national importance or being subject to national initiatives. The Petitioner asserts that his endeavor aligns with the U.S. Small Business Administration (SBA)'s initiatives like the Small Business Development Centers or the SCORE mentoring program. The Petitioner refers to printouts from the SBA website and the SCORE Foundation website, which show that Small Business Development Centers provide counseling and training to small businesses and that SCORE mentoring program provide free business advice to small business owners. The Petitioner also refers to the Proclamation on Small Business Week issued by President Joseph R. Biden Jr. in 2021, which provides that President Biden proclaimed September 12 to 18 as National Small Business Week to recognize the contributions of small businesses to the American economy and continue supporting them.

While the government initiatives recognize the contributions of small businesses to the U.S. economy and show the government's support for small businesses, they do not indicate that the government has a particular interest in the Petitioner's planned business activity to provide business management and financial advisory services to businesses. The record does not sufficiently demonstrate how his planned business activity to provide business management and financial advisory services to businesses will make an impact on a matter that a government entity has described as having national importance or is the subject of national initiatives.

The Petitioner also asserts that his proposed endeavor to work as a franchise and business management consultant is of national importance because it addresses labor shortage. He explains that there is a shortage of qualified consultants in this field, highlighting the importance and demand for his expertise. However, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, the U.S. Department of Labor addresses worker shortages through the labor certification process. Therefore, a shortage of qualified professionals alone is not sufficient to demonstrate eligibility for the national interest waiver. *See Dhanasar*, 26 I&N Dec. at 885.

As for the economic value and job creation that the Petitioner asserts his consulting company will offer, the Petitioner claims that his business plan discusses the potential to employ U.S. workers directly. The record includes business plans, articles of organization, and printout of the company website for [redacted] The updated business plan, dated June 2023, indicates that the company will need four financial and management accounting analysts, one director, and one administrative assistant. The updated business plan forecasts a total revenue of $481,100 and a net loss of -$3,322 in 2024 and a total revenue of $502,190 and a net profit of $10,288 in 2028. However, the record does not contain sufficient evidence supporting the income projections or staffing requirements. The preponderance of the evidence standard requires the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. *See id.* Here, lack of supporting details detracts from the credibility and probative value of the business plans.

Furthermore, even if all the projections in the business plans were realized, the record lacks sufficient evidence demonstrating that the Petitioner's consulting company will have an impact on the field of business management at a level commensurate with national importance. In *Dhanasar*, we stated that an endeavor that has a 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 Dhanasar*, 26 I&N Dec. at 890. The Petitioner has not offered sufficient evidence that his consulting company will employ a significant population of workers in an economically depressed area or that his endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. Therefore, the record does not sufficiently demonstrate that the Petitioner's proposed endeavor is of national importance.

Additionally, the Petitioner states that his company plans to offer executive training programs for charter financial analysts (CFA) and certified management accountants (CMA) professional designations. He claims that offering executive programs to obtain the CFA and CMA professional designations is of national interest to the United States because it can help to promote economic growth, enhance the competitiveness of American businesses, strengthen the country's reputation as a leader in business management by providing individuals and organizations with the financial and management accounting skills and knowledge needed to make sound, long-term decisions about investments and financial management.

Regarding the Petitioner's plans to provide training programs for the CFA and CMA designations, the record does not sufficiently establish that this undertaking has broader implications for his field, as opposed to being limited to those who participate in his training programs. While the Petitioner's plans to provide training programs or disseminate his knowledge to other professionals in the field have merit, the record does not sufficiently demonstrate that his instructional or teaching activities offer benefits that extend beyond his students or trainees to impact the field of business management, the field of finance, or the field of accounting more broadly. Likewise, 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. *Dhanasar*, 26 I&N Dec. at 893.

The Petitioner submitted two expert opinion letters from [redacted] an adjunct professor of business at [redacted] and a [redacted] a professor of accounting at [redacted] He contends the expert opinion letters demonstrate that the benefits of his proposed endeavor would extend beyond an organization and would positively impact our nation. He adds that after reviewing his credentials, professional work experience, and achievements, the experts determined that his proposed endeavor is of substantial merit and national importance. Professor [redacted] state that the Petitioner's proposed endeavor to provide services in the financial advisory and consulting industry has both substantial merit and national importance because he will create jobs and contribute to the nation's economy, create financial stability for many individuals, and contribute to the overall societal welfare. Professor [redacted] also states that the Petitioner's endeavor has national and potentially global implications within the field of financial advisory services. Professor [redacted] states that the Petitioner's proposed endeavor has both substantial merit and national importance because it has significant potential to employ U.S. workers and has other substantial positive economic effects, because his proposed endeavor will broadly enhance societal welfare or cultural enrichment, and because his proposed endeavor will impact a matter that a government entity has described as having national importance or is the subject of national initiatives.

Regarding the expert opinion letters, USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). Nevertheless, USCIS is responsible for making the final determination regarding a petitioner's eligibility for the benefit sought. *See id.* While we value expert opinion letters, the record does not contain sufficient information and evidence to substantiate the claims made by the professors. While the professors make general claims about the importance of the Petitioner's proposed endeavor, neither letter explains how the Petitioner's specific proposed endeavor rises to the level of national importance. The Petitioner has not established the claimed fact with unsupported testimonial evidence alone. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (stating that simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings).

The record also contains the Petitioner's diplomas, school transcripts, resume, certificates of course completion, awards from his former employer for international publication of three case studies, certificates of the designation as a chartered financial analyst, as a certified management accountant, and a Canadian risk manager, and recommendation letters from his former employer and former colleagues. The Petitioner's education, work experience, professional achievements, past contributions to his former employers, and other professional qualifications are relevant under the

second prong of *Dhanasar* to support the claim that that he is well positioned to advance the proposed endeavor. *See Dhanasar*, 26 I&N Dec. at 890. The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *See id.* at 889.

The Petitioner on appeal presents two AAO non-precent decisions in which the petitioners had submitted a Form I-140 seeking classification as an individual of extraordinary ability in the business or in the science and we sustained the appeal. First, these decisions discuss eligibility for a different visa classification. Second, neither decision was published as a precedent and, therefore, these decisions do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

The Petitioner also presents additional evidence, such as AAO Practice Manual, 8 C.F.R. § 103.5 (Reopening or reconsideration), 8 C.F.R. § 204.5 (Petitions for employment-based immigrants), *Matter of Chawathe*, *Matter of Dhanasar*, 20 C.F.R. § 656 (Labor certification process for permanent employment of aliens in the United States), a decision issued by the Board of Alien Labor Certification Appeals of U.S. Department of Labor, and Volume 6, Part F, Chapter 5 of USCIS Policy Manual (Advanced degree or exceptional ability). While the AAO non-precedent decisions and other additional materials submitted by the Petitioner provide general guidance on how we should adjudicate appeal cases, they do not support the Petitioner's claim that his proposed endeavor is of national importance.

Because the record does not sufficiently demonstrate the national importance of his proposed endeavor required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Therefore, further analysis of his eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose, and we will reserve these issues for future consideration should the need arise.[3]

III. CONCLUSION

Although the Petitioner has shown that he is a member of the professions holding an advanced degree and that his proposed endeavor has substantial merit, he has not established by a preponderance of the evidence that his proposed endeavor is of national importance. Accordingly, we conclude that the Petitioner is ineligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[3] *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).