U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31864359

Date: JUL. 9, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, who describes himself as a financial management consultant, a tax consultant, and an entrepreneur, 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 the record did not establish that the Petitioner merited 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).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

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded that the Petitioner qualified as an advanced degree professional. The remaining issue to be determined on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A definitive statement from the Petitioner submitted in response to a request for evidence described his proposed endeavor as follows:

> [The firm] specializes in delivering meticulous accounting and financial management consulting services aimed at enhancing clients' success and productivity. The firm's focus spans across both individual and corporate sectors, aiming to provide specialized assistance in tax consulting, financial advice, and annual financial statement services. With a dedicated commitment to precision and expertise, [the firm] prides itself on navigating intricate financial landscapes with clarity, offering quality, stability, and reliability in its service to fortify clients' financial endeavors.

The Director concluded that, while the Petitioner's proposed endeavor had substantial merit, he did not demonstrate that his proposed endeavor would have national importance. On appeal, the Petitioner asserts that the Director's decision "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations" and contends, without further explanation, that the Director applied a stricter standard of proof than that of preponderance of the evidence.[2] However, he does not identify any unusual requirements imposed, nor does he specify how the Director erred in the decision. This alone is grounds for dismissal. An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v). Nevertheless, for the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his endeavor in order to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

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. *Dhanasar*, 26 I&N Dec. at 889.

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 "the specific endeavor that the

[2] *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and 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. Further, 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.

On appeal, the Petitioner points to reports and articles provided in support of the petition discussing the roles of management consultants and business data analysts, as well as the relationship between immigration and the U.S. economy. While this material provides general information related to the field in which the Petitioner intends to work, it does not provide insight into his plan to operate a financial consultancy company or show how this specific endeavor would have a potential prospective impact of national importance.

Further, on appeal, the Petitioner describes in general terms how his "Accounting and Financial Management Consulting Services firm" has national importance:

> The firm's focus on providing specialized services such as Business Tax Consulting, Individual Tax Preparation, Financial Advice, and Annual Financial Statement services is aimed at meeting an identified niche market demand. The Petitioner's comprehensive understanding of the Accounting and Financial Management Consulting Services sector and their vision for differentiated services are set to positively impact the U.S. economy, particularly in the States of Virginia and Illinois.
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> . . .
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> The [Petitioner's] proposed endeavor motivates economic production and national development. His work within the United States will translate into profitable business and commercial tendencies, which have in turn contributed to the national economy and the domestic job market.

The Petitioner's business plan provides an overview of his plans for his firm's operation and describes positions he would hire, potential marketing efforts, and profit projections. However, the information in the business plan is not supported by objective evidence to demonstrate how his firm would have a prospective national impact on the field or on an economy of any scale. For example, his business plan "projects 4.77 million dollars in revenue" by its fifth year of operation, and his definitive statement describes the firm's "employment strategy" as follows:

> The firms [sic] employment strategy emphasizes the creation of twenty-one (21) direct roles complemented by an estimated 27 indirect job opportunities, all buoyed by the economic multipliers present in the U.S. economy. Anticipated financial projections, grounded in thorough market research, forecast a net income of $840 thousand in the initial five years, contributing an estimated $237 thousand in Federal Taxes.

These claims do not, however, provide an objective basis for his projections, nor are the numbers corroborated by probative evidence sufficient to demonstrate that it is likely his firm would have a positive national economic impact or a national prospective impact within the field. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

In addition, the Petitioner's business plan references growth trends related to the "Accounting Service industry," but he has not demonstrated that his proposed endeavor would serve to impact the industry or field more broadly, rising to the level of national importance. For instance, it is not clear how the Petitioner's operation of a firm providing financial and tax consultancy services to small businesses would have a positive economic impact at the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890. While the Petitioner indicates that his proposed endeavor would address a "shortage of business professionals" in the United States, we observe that fluctuating opportunities within the general labor market do not demonstrate that his endeavor stands to have an impact on the financial or tax consultancy industries or otherwise have implications rising to the level of national importance. It is not clear how a business of the size and scope described in the business plan would address any purported shortage of "business professionals" that would constitute an impact on a national level.

The Petitioner's definitive statement also asserts that his work "will contribute to access to innovation, new business practices, and economic prosperity . . . ." However, the statement does not describe what access or practices the Petitioner's firm will introduce, and the record does not include evidence detailing how the Petitioner's proposed endeavor will actualize these presumptive and ambiguous ambitions. The Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor based on its potential job creation or impact on the U.S. economy. Finally, the Petitioner has not provided sufficient evidence to show that he would employ a significant population of workers in a particular region, nor has he shown that his proposed endeavor would offer a region or its population substantial economic benefits through employment levels, business activity, or tax revenue.

The Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the nation. Specifically, he has not shown that his business stands to provide substantial economic benefits to any particular locality or to the United States overall. While the business plan explains in general terms that his company's services would benefit the U.S. economy because his firm will "generate American jobs, increase national and international integration and productivity, and enhance revenues for the U.S. economy at large," that reasoning is speculative and not based on any objective evidence related to his proposed endeavor, the outcomes of which the Petitioner has not specifically defined. As such, the business plan does not demonstrate that the prospective benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

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 reasons for dismissal are 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 an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.