U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31318714

Date: JUL. 16, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a nutritionist, 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 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 Petitioner seeks to work as a nutritionist in the United States and assist clients in private practice. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of 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.

The Petitioner indicated on his Form I-140 that he sought to pursue the job of "nutritionist," which would entail "[h]elp[ing] people create eating plans that are realistic, sustainable, and healthy. . . . [N]utritionists work with each client individually to create plans specifically for their situation." The Petitioner also submitted documentation – a professional plan – that detailed his experience in the field and his intent to work as a nutritionist both in private practice and for other businesses. The Director issued a request for evidence (RFE) requesting, among other things, further evidence of how the proposed endeavor would be of national importance. In response to the Director's RFE, the Petitioner claimed, through counsel, that he planned to work as a nutritionist and provide his services in catering and quality control, clinical and sports nutrition, management services, and community education. He also provided additional documents including his academic record and resume, a professional plan, employment verification letter, professional identification card, letters of recommendation and interest.

In denying the petition, the Director concluded the Petitioner had not clearly established what exactly his proposed endeavor entailed. The Director determined it was not apparent whether the nutritionist functions outlined in his petition will be conducted independently, as a contractor in connection with a business in the United States, or as a potential employee of some other business. The Director concluded that although Petitioner's proposed endeavor has substantial merit, the Petitioner did not establish his proposed endeavor has broader implications, has significant potential to employ U.S. workers, or that it would broadly enhance societal welfare or cultural or artistic enrichment, and thus did not establish its national importance.

On appeal, the Petitioner maintains that his proposed endeavor is of national importance because it will have a positive social and economic impact, addressing important issues such as the reduction of diseases related to poor diet. The record contains letters from potential employers who have seen his resume, expressing interest in scheduling interviews or connecting further regarding possibly working with him in the future. The Petitioner also submits letters from individuals who attest to his knowledge and experience as a nutritionist. In addition, the record includes various industry reports including

articles discussing the importance of nutrition and the prevalence of diet-related illnesses in the United States.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact and "broader implications." *Matter of Dhanasar*, 26 I&N Dec. at 889. An undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. *Id.* An endeavor may also be of national importance if it has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id. at* 890.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the Petitioner's work. While the Petitioner claims that his proposed endeavor is of national importance, 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. This is particularly true where, as in the Petitioner's case, we are unable to determine the exact nature of the proposed endeavor. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Chawathe*, 25 I&N Dec. at 376.

A determination of whether a specific endeavor has national importance under *Dhanasar's* first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* Evidence of the Petitioner's claimed extensive experience, qualifications, and achievements as a nutritionist are material to *Dhanasar's* second prong—whether an individual is well positioned to advance a proposed endeavor—but they are immaterial to the first *Dhanasar* prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91. The Petitioner also relies on various industry reports to establish that his proposed endeavor holds national importance. As previously mentioned, 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 foreign national proposes to undertake." *Id.* at 889.

The Petitioner claims he will "improv[e] public health, reduc[e] healthcare costs, and ensur[e] a healthier future for the nation" and further argues that his proposed endeavor "has the potential to reduce the prevalence of chronic diseases, improve productivity, and contribute to a healthier, more vibrant workforce, which directly benefits the nation's economy and overall well-being." While the Petitioner asserts that his work will have a broad impact in the United States, the record does not include adequate corroborating evidence of what the Petitioner's proposed work entails or demonstrate that his proposed endeavor stands to sufficiently extend its benefits beyond his immediate clients and customers to enhance societal welfare on a broader scale indicative of national importance. The Petitioner has also not sufficiently explained how he will positively impact the U.S. economy on a broad scale rising to the level of national importance. Without evidence projecting U.S. economic impact or job creation attributable to the Petitioner's proposed endeavor, it is insufficient to assert that the benefits to the U.S. regional or national economy resulting from the proposed endeavor would rise to the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner 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 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).

III. CONCLUSION

As the Petitioner has not met the *Dhanasar* analytical framework's requisite first prong, we conclude that he has not established that 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.