U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31491378

Date: JULY 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a senior billing analyst, 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 did not establish that he 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.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. 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 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72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).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.

Id.

II. ANALYSIS

The Director found that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.[2] We agree that the record supports that determination.

The issue 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. The Director determined that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further determined that the Petitioner did not establish that he is well positioned to advance the proposed endeavor under *Dhanasar's* second prong, or 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 under *Dhanasar's* third prong. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[3]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, the relevant question is not the importance of the field, 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.

The Petitioner proposes to establish a financial consulting business in Florida for which he would be its chief executive officer. The Petitioner indicates that his business would provide financial consulting services to small-sized and start-up businesses to help improve their productivity and growth. According to the Petitioner, most small businesses fail because of poor financial planning, therefore his business would provide specialized solutions to its clients' "unique needs" and business goals, particularly businesses recovering from the COVID-19 pandemic. His business would focus on delinquency rate reduction and management of accounts receivable activities to help clients with cost reduction, risk mitigation, and increased revenue. We agree with the Director that the Petitioner's proposed endeavor has substantial merit.

[2] To demonstrate he is an advanced degree professional, the Petitioner submitted his diploma, his academic transcript, an academic evaluation, and employment verification letters. The record demonstrates that he holds the foreign equivalent of a U.S. bachelor's degree in business administration followed by more than five years of progressive experience in his specialty. See 8 C.F.R. § 204.5(k)(3).

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

Even though the Petitioner's proposed endeavor has substantial merit, the Director determined that the Petitioner did not establish that his proposed endeavor is of national importance. The Director found that the Petitioner did not demonstrate his proposed endeavor would extend beyond his business and clients to have a potential prospective impact on his field more broadly. The Director further determined that the Petitioner did not show how his work with his financial consulting business has "significant potential to employ U.S. workers or otherwise offers substantial positive economic effects" to the national or regional economy as contemplated by Dhanasar.

On appeal, the Petitioner contends that the Director's decision has material errors because it did not consider or analyze evidence submitted with his initial petition and with his request for evidence response. In particular, the Petitioner stresses that his business plan clearly sets out the national importance of his proposed endeavor, including his endeavor's potential broad implications on his field, the U.S. economy, and society, as well as its significant potential to employ U.S. workers. In addition, he maintains that the Director overlooked "probative documents" showing his endeavor is of national importance in accordance with Dhanasar, specifically an opinion letter, his business plan, and media articles.[4]

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). The Director, in evaluating whether the Petitioner had established that he meets the first prong of the Dhanasar framework, weighed all the evidence but determined that the evidence overall lacked probative value. See Matter of Chawathe, 25 I&N Dec. at 376. Upon de novo review, the Petitioner has not demonstrated that the evidence submitted establishes his eligibility by a preponderance of the evidence, as discussed below.

The Petitioner has not sufficiently documented the potential prospective impact of his proposed endeavor, including the asserted broad impact on his field or economic benefits to the United States and the areas his business intends to serve. The Petitioner's statements and business plan stress the importance of the financial consulting services field to the U.S. economy, the expected increase in demand for financial consulting services, and the Petitioner's business helping to fill a shortage of workers in the field. To support the Petitioner's statements and business plan, the record includes

[4] With the appeal, the Petitioner includes documents submitted with his initial petition and with his request for evidence response. He also offers new evidence on appeal to show his eligibility for the national interest waiver, including articles about small businesses, the impact of COVID-19 on small-sized businesses, the U.S. debt ceiling, and the large public accounting firms. He maintains such new evidence may be considered on appeal since "the evidence presented is consistent with the AAO's acceptance of new evidence, as it need not be new or previously unavailable." He contends, "[t]he evidence, in accordance with 8 C.F.R. 103.2(b)(1), attests that [the Petitioner] was eligible for the requested benefit at the time of filing and remained eligible through the entire adjudication process." However, the Petitioner's arguments are misplaced. We will not consider this new evidence for the first time on appeal as it was not presented to the Director after having an opportunity to do so with his response to the Director's request for evidence. See Matter of Soriano, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); see also Matter of Obaigbena, 19 I&N Dec. 533 (BIA 1988).

articles related to the common reasons small businesses fail; reasons for retail bankruptcies; a market analysis of the financial advisory industry; the availability of jobs in the financial services field; strengthening of the U.S. economy post-COVID-19 pandemic; and the impact of small businesses on big businesses and the U.S. and local economies.

We recognize the importance of the financial consulting services industry and related careers to the U.S. economy, particularly in helping financially vulnerable businesses. However, merely working in the financial consulting services field or starting a financial consulting business for small-sized and start-up businesses is insufficient to establish the national importance of the proposed endeavor. Moreover, the growth and importance of an industry are not sufficient to meet the national importance requirement under the Dhanasar framework. Instead of focusing on the importance of an industry or field, or a shortage of workers in a field, we focus on the "the specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889.

In Dhanasar, we 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. Here, the evidence does not suggest that the Petitioner's work establishing a financial consulting business and hiring employees in a growing industry with a shortage of workers would impact the financial consulting field or the U.S. economy more broadly.

With the proposed expansion of his business to other locations in the United States, the plan maintains that his business will create jobs and have other substantial positive economic effects, such as increased wages, payment of taxes, and helping financially vulnerable small-sized and start-up businesses be financially secure by reducing their loan delinquencies and increasing profits. To support his claims, the business plan discusses the business' location in [redacted], Florida with a general plan to expand to additional locations in the future; the Petitioner's investment of $30,000 into the business; a market analysis of the financial consulting industry; the business' financial consulting services; the expected growth of the financial consulting services industry; and the business' projected marketing, personnel, and financial forecasts.

The Petitioner has not provided corroborating independent and objective evidence to support his claims that his business' activities stand to provide substantial economic benefits to Florida communities or the United States. For instance, the business plan projects that in five years the business will hire 12 direct employees, generate an additional 25 indirect jobs, and pay over $200,000 in taxes. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 12 direct jobs and 25 indirect jobs, and paying over $200,000 in taxes over a five-year period rises to the level of national importance. Also, without sufficient documentary evidence that his proposed job duties as the owner and chief executive officer of his financial consulting business would impact the financial services field more broadly, rather than benefiting his

business and his clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The Petitioner further claims that by training his staff and transferring his professional knowledge to them, his dissemination of professional knowledge would create more qualified workers in his field, thereby impacting his field more broadly. However, 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. Matter of Dhanasar, 26 I&N Dec. at 893. We noted that "[a]n 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. at 889. Likewise, the Petitioner's intent to transfer his professional knowledge to others on his staff through trainings and continuing education does not demonstrate an impact on the financial consulting field more broadly or rise to the level of national importance as contemplated by Dhanasar.

To further support his assertions, the Petitioner submitted an opinion from a professor of finance at [redacted] The opinion states that the Petitioner's areas of specialization, credit analysis, collection, and accounts receivable, are "in demand and of national importance . . . ." The opinion maintains that the Petitioner's experience in his field will help U.S. businesses efficiently manage their financial resources, particularly businesses affected by the COVID-19 pandemic, thereby it would "broadly enhance societal welfare." However, the opinion's focus on the importance of the financial services industry to the economy and societal welfare, and how the Petitioner's professional experience makes him well positioned to help businesses is misplaced. As noted above, importance of an industry or field is not sufficient to meet the national importance requirement under the Dhanasar framework. Moreover, the Petitioner's professional experience relates to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. 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. Id. at 889.

The opinion also generally describes the Petitioner's proposed business as stated in his business plan, including its location in [redacted] Florida, its plan to expand to other cities, its services, and its projected personnel. Based on these plans, the opinion states that the Petitioner's endeavor has "significant potential to employ U.S. workers and has other substantial positive economic effects." The opinion does not, however, focus on the Petitioner's specific endeavor and its potential prospective impact on the U.S. economy or in the field of financial consulting services. See id. The opinion's re-stating of the business plan's projected personnel and financial forecasts without providing a credible basis for these projections is not sufficient to demonstrate a significant potential to employ U.S. workers as contemplated by Dhanasar.

The Petitioner further argues that the Director ignored the opinion and other evidence that shows his endeavor impacts matters that the government has described as having national importance or is the subject of national initiatives. The Petitioner contends his endeavor is aligned with the America Rescue Plan, a U.S. government initiative that grants economic relief for small businesses effected by the COVID-19 pandemic, because his business would provide financial consulting to small businesses

economically affected by the COVID-19 pandemic. The opinion stresses that the importance of the financial services and insurance industries to the U.S. economy shows the endeavor "impacts a matter that a government entity has described as having national importance or is the subject of national initiatives." In addition to the opinion, the Petitioner submitted articles relating to U.S. government initiatives which support small businesses post-COVID-19.

The importance of the U.S. government initiatives, such as the American Rescue Plan, is not in dispute, but their overall significance does not establish the national importance of the Petitioner's proposed endeavor in particular. While the articles show that the support of small-sized businesses and their financial security are important to the U.S. economy, it does not follow that an individual providing financial consulting advice to small-sized and start-up business clients who may be affected by the COVID-19 pandemic has national importance. As discussed earlier, working in or establishing a business in an important field is insufficient on its own to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake" and consider the endeavor's "potential prospective impact." Id. The Petitioner makes general statements about his business's potential impact on national initiatives but does not quantify the proposed endeavor's expected impact in the identified areas of concern, or provide objective, probative evidence to support his contentions. Although the Petitioner has shown that supporting the financially vulnerable small-sized businesses and entrepreneurs affected by COVID-19 pandemic are nationally important issues, he has not demonstrated the potential prospective impact of his specific endeavor to such nationally important matters.

Based on the above, the Petitioner has not demonstrated that his proposed endeavor has the potential to extend beyond his business and his future clients to impact his field, the U.S. economy, or nationally important matters more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as the owner of his proposed financial consulting business offers the claimed innovations that contribute to advancements in his industry or otherwise has broader implications for his field. The economic benefits that the Petitioner claims depend on numerous factors, and he did not offer a sufficiently direct evidentiary tie between his financial consulting work and the claimed potential economic benefits.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. This identified basis for dismissal is dispositive of the Petitioner's appeal, and therefore we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that "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 established eligibility under the requisite first prong of the Dhanasar analytical framework, he is not eligible for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.