U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31860286

Date: JULY 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a lawyer, 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 Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but 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 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 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

In his business plan, the Petitioner states he will establish a consulting firm in the United States that will advise United States-based businesses interested in entering the Brazilian market. The Petitioner explains he will lead the company, which will focus on providing advice on Brazilian law to businesses and individuals who are engaged in trading and direct foreign investment projects. The Petitioner states his company will be based in [redacted] Florida and will later expand across Florida and to other states.

The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

A. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined the Petitioner's proposed endeavor has substantial merit. We agree.

The Director concluded, however, that the Petitioner did not establish the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish his proposed endeavor had significant potential to impact his field, employ United States workers, or otherwise have substantial positive economic effects.

On appeal, the Petitioner asserts the Director did not apply the preponderance of the evidence standard, only considered his proposed endeavor's potential to employ U.S. workers and its impact on the regional or national economy, and did not consider whether his proposed endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives. The Petitioner states that according to the Congressional Research Service, during the Obama and Trump Administrations, United States and Brazilian officials pledged to form stronger partnerships and trade and investment between the two countries has deepened throughout the past two decades. The Petitioner submitted articles discussing U.S. companies looking to Brazil for new market opportunities, the 2020 investment climate in Brazil, and trade and economic cooperation

between the United States and Brazil. Our assessment of national importance does not focus on the importance of issues to a field in general. Rather, our assessment "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, none of the articles mention the Petitioner, or otherwise address the potential prospective impact of his proposed endeavor.

The Petitioner also claims his proposed endeavor can benefit the United States economy because businesses and individuals wishing to invest in Brazil need professional legal services to comply with relevant laws and regulations. The Petitioner asserts the expansion of American companies to Brazil will generate profit distribution in the United States, dividends to American shareholders, and jobs and taxes in the United States. The Petitioner does not demonstrate, however, that his work would extend beyond his company's individual clients to impact his field more broadly on a level commensurate with national importance. *See id.* (explaining that when assessing national importance "we look for broader implications").

The Petitioner further asserts that as a small business, his company would play a critical role in local economies because microbusinesses collectively employ 41 million people and have a five trillion-dollar economic impact. The Petitioner claims his company will generate direct and indirect jobs and stimulate the investment of foreign companies in the United States. The Petitioner's business plan states the company will employ five individuals in the first year, increasing to 17 individuals in the fifth year. The business plan projects a net profit of $31,150 the first year, increasing to $103,995 in the fifth year. The business plan does not include an explanation of how its financial projections were calculated or comparative data on how its projected profits compare to other consulting firms. Although small businesses may collectively substantially impact the national economy, the Petitioner has not established that his company has significant potential to employ United States workers or would have other substantial positive economic effects indicative of national importance. *See id.* at 890 (discussing substantial positive economic effects).

The Petitioner further claims his proposed endeavor has national importance because he will use customer relationship management (CRM) software to manage sales and identify new business opportunities. The Petitioner does not indicate that he developed CRM software or otherwise made significant contributions with national or even global implications for his field. *See id.* at 889 (discussing improved manufacturing processes or medical advances as examples of national or even global implications within a particular field).

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. *Id.* at 893. Here, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clientele to impact his field more broadly at a level commensurate with national importance.

The Petitioner has not established that his proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within his field, or has other broader implications indicating national importance.

B. The Remaining *Dhanasar* Prongs

The Petitioner asserts the Director erroneously failed to address the second and third *Dhanasar* prongs. However, the Petitioner has not established the national importance of his specific proposed endeavor and he does not meet the first prong of the *Dhanasar* framework. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating 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

The Petitioner has not established the national importance of his proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, he has not demonstrated that he is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.