U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 31300679

Date: JUL. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 the Petitioner's eligibility for the requested national interest waiver. 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.

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

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:

- 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 determined that the Petitioner qualified as an advanced degree professional but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor 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. *Matter of Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The record reflects that the Petitioner intended to work in the accounting field to own and operate a tax consulting company. Through his company, he planned to provide a variety of specialized services related to tax consulting to both individuals and companies of all sizes to "help these clients with tax planning, inheritance issues, charitable giving, and other complex tax needs." The Petitioner intended to help his clients with "preparing [their] tax return, searching for tax deductions to reduce tax liability, dealing with taxes on rental property income, helping manage [clients'] capital gains taxes, among other tax-related financial products." He also planned to offer services relating to the incorporation and operation of businesses, including preparing articles of incorporation, drafting meeting minutes, and obtaining the necessary business licenses. In support of this endeavor, the record contains a five-year business plan, an expert opinion letter, multiple letters of recommendation, and several industry articles discussing the accountant and auditing field, the importance of entrepreneurship as well as small business development to the U.S. economy, and articles discussing the various economic hardships impacting U.S. businesses.

While acknowledging the evidence submitted, the Director concluded that the record did not establish the national importance of the Petitioner's endeavor because his endeavor would not result in broader implications within his field. Moreover, the Director determined that the Petitioner did not establish that his endeavor had significant potential to employ U.S. workers or otherwise offer substantial positive economic effects

[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).

On appeal, the Petitioner expresses general disagreement with the Director's conclusions and asserts that, by filing the appeal, he "aims to reinforce the national significance of the proposed endeavor." Yet, he does not specifically identify how the Director erred in their conclusions or what factors in the decision were erroneous. As an appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision, this omission alone is grounds for dismissal. *See* 8 C.F.R. § 103.3(a)(1)(v). Nevertheless, upon a de novo review of the record, we agree with Director's determination that the Petitioner's proposed endeavor to establish a tax consulting business, while substantially meritorious, is not of national importance.

In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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 in the record does not establish the Petitioner's endeavor will result in broader implications to the industry, beyond the immediate benefits realized by his prospective clients. On appeal, the Petitioner asserts that his business is in the national importance as it will "play a pivotal role in reversing" the increasing trend of business closures across the United States resulting, in part, due to bankruptcy and other financial shortcomings. Moreover, the Petitioner states that, given the ongoing challenges faced by businesses nationwide, his company "emerges as a crucial force for change with unmistakable national implications." He claims that his company will alleviate the burden on businesses navigating complex tax obligations, while also optimizing financial outcomes and "bolstering the resilience and growth of small and medium-sized businesses." But, while the Petitioner's services may greatly improve the business operations of his prospective clients, the Petitioner has not established how these individualized benefits rise to the level of national importance contemplated in *Dhanasar*. 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 too, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his potential clients to impact the tax consulting field more broadly.

Likewise, while the Petitioner asserts on appeal that his company "will bring investments to the country, generate job opportunities, and benefit the U.S. government through the amount of taxes paid," the record does not establish that these benefits, even if realized, will rise to the level of national importance contemplated in *Dhanasar*. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would result in the substantial positive economic effects contemplated in *Dhanasar*. In the business plan, he indicated that by the fifth year of operations he anticipates his company will have an annual revenue of $1,689,409 resulting in an annual federal tax payment of $261,026. He also indicated that by year five, he intends to employ 18 full-time employees with a payroll expense of $1,046,596 annually, which would result in 32 indirect jobs. However, the business plan provides little explanation and objective basis of these projections. And, even if the

endeavor's revenue and job creation projections were sufficiently corroborated, they do not establish that the endeavor would operate on a scale rising to the level of national importance. The Petitioner has not sufficiently explained and supported with documentary evidence how his proposed employment numbers and revenue would impact the area of intended operations.

Finally, we have reviewed the testimonial evidence on record, including the Petitioner's recommendation letters and the expert opinion letter from Professor S-L-M- and conclude they are also not persuasive in establishing the national importance of the proposed endeavor. The letters primarily focus on the Petitioner's professional background as well as information and statistics concerning the consulting industry and entrepreneurialism in general, and do not provide insight into the broader implications of the Petitioner's business. For example, in their expert opinion letter Professor S-L-M- discusses the Petitioner's background and expertise at length, but they do not discuss the direct potential impact of the Petitioner's proposed endeavor nor do they discuss the impact of the service offerings outlined in his business plan. As such, the expert opinion letter lacks relevance with respect to the national importance of the Petitioner's specific proposed endeavor. *See, e.g., Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988) (finding that expert letters are not presumptive evidence of eligibility); *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

## III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs as well as a determination as to whether the Petitioner has met the requirements of EB-2 immigrant classification. *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).

**ORDER:** The appeal is dismissed.