U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31651448

Date: JUL. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and marketing consultant, 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 record did not establish the national importance of the Petitioner's proposed endeavor or that the waiver of the job offer and labor certification requirement for EB-2 classification would be in the national interest. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner asserts that his proposed endeavor would have a broad impact on the marketing industry as a whole and thus be of national importance.

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:

- 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, a native and citizen of Brazil currently residing in the United States, seeks a waiver of the job offer and labor certification requirements for EB-2 classification. The Petitioner seeks to open a consulting firm focused on small to medium sized businesses in the Pennsylvania area. In his brief to the Director, the petitioner stated:

> The Company will help clients by providing well-considered, specialized advice and services. The Company's staff members will partner with business owners, managers, and other employees to identify the most suitable solutions for clients according to their specific needs. The Company's staff will focus on identifying opportunities for improvement in multiple areas, including physical and digital marketing strategies, sales strategies, and more. Taking advantage of the latest technology, the Company will also perform standardization of the clients' marketing and sales processes, thereby achieving set objectives. (emphasis removed)

The Petitioner provided a business plan, expert opinion letter, academic records, letters of support from past students, employers, and clients and evidence of his membership in professional associations. The Director requested additional information regarding the national importance of the Petitioner's proposed endeavor. In response, the Petitioner re-iterated his education and experience in the marketing sector. He further stated that his endeavor would have national importance because he would develop new strategies to revolutionize the marketing industry through his research and disseminate those methods to a broad audience leading to the cultural enrichment of the United States.

The Director determined that the Petitioner had established eligibility for EB-2 classification as a professional with an advanced degree and that his proposed endeavor had substantial merit, but that he had not established the national importance of his proposed endeavor, or, that on balance, it would be in the best interest of the United States to waive the job offer and labor certification requirements for the EB-2 classification.

On appeal, the Petitioner resubmits a large portion of his response to the Director's Request for Evidence (RFE) highlighting what he believes to be the national importance of his endeavor. The Petitioner argues that through his research, his "contributions would extend far beyond the companies

[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).

that will eventually retain his services." He further argues that the Director imposed an excessive burden to demonstrate the national importance of his proposed endeavor by requiring him to meet all the criteria in the *Dhanasar* framework. The Petitioner states that he has shown the global implications of his proposed endeavor because he will develop innovative tools to help businesses reach their full potential and he has shared his academic work with professionals in the field. He further states that his endeavor has significant potential to employ U.S. workers, will have substantial positive economic effects, and more broadly enhance societal welfare by helping small businesses succeed.

After consideration of the documents provided in support of the petition and the arguments made on appeal, we adopt and affirm the Director's decision as it relates to the national importance of the Petitioner's proposed endeavor. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

The first prong of the *Dhanasar* framework, 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

According to the business plan, the Company intends to leverage existing marketing tools and technology to provide detailed and specific consulting services supported by the Petitioner. The Petitioner plans to focus on the [redacted] region of Pennsylvania in year one, [redacted] and the surrounding region in year two, [redacted] in year three, "northern states" in year four and "southern states" in year five. The Petitioner's business plan anticipates that the Petitioner's company will reach a total of eight employees in year five, with payroll expenses growing from $210,257 in year one to $485,751 in year five. He also projected generating $310,500 in sales in year one, increasing to $709,749 in year five. The Petitioner indicated that he would charge $150 per hour of consulting work in order to attract clients and remain competitive with similar companies. Moreover, the Petitioner's business plan states that his contribution to the marketing industry would result in the indirect creation of 58 positions in 5 years.

The Petitioner's business plan does not explain how these forecasts were calculated, or adequately clarify how these projections will be realized, nor does the record contain evidence to support the plan's financial projections. The Petitioner also claims that the "ripple effects" from his marketing business will create jobs and provide increased revenue for his customers. This determination hinges on an assessment of the societal or economic implications of the Petitioner's contributions, requiring he demonstrate broader benefits that extend beyond the confines of a local industry. *See Dhanasar*, 26 I&N Dec. at 893. Therefore, while ripple effects may signify positive developments within a narrow area, they alone may not suffice to establish the requisite level of national importance. *Id.* at 890, 892. Thus, it remains incumbent upon petitioners to present compelling evidence of their capacity to significantly benefit the industry or field as a whole, in accordance with the prevailing legal standards. The preponderance of the evidence standard requires that the evidence demonstrate

that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. *See id.* Here, the lack of supporting details detracts from the credibility and probative value of the business plan.

The Petitioner relies heavily on his academic credentials, professional experience, and achievements to establish the national importance of his proposed endeavor. He provided several letters of support and an expert opinion letter that provide insight into his past research and work in the field of marketing. However, these letters do not provide additional insight into the Petitioner's proposed consulting company or its national importance. In general, factors that relate to a petitioner's qualifications, experience, or educational credentials relate 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. While the Petitioner contends that he plans to continue doing academic research in the field of marketing and providing that research to the broader community of marketing practitioners, thus having a global reach, the Petitioner's specific endeavor in this case is a marketing consulting company focused on small to medium sized businesses. 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. *See id.* at 889. The arguments made in the expert opinion letter and letters of support relate to the Petitioner's past accomplishments and not their future potential to impact the field or marketing more broadly through his proposed endeavor in the United States.

Even if we assumed all the projections in the business plan were accurate, the record lacks evidence demonstrating that its impact would be nationally important. The Petitioner's statements in support of the petition contend that his business will have a broader impact on the marketing industry through the dissemination of his work. The expert opinion letter from F-Q-[2] states that it is in the national interest of the United States to grant the waiver based on the Petitioner's past accomplishments. The letter goes on to state the importance of the global management consulting market, the role of marketing in promoting the health of the overall economy, and the Petitioner's knowledge of the Brazilian market. However, the Petitioner did not identify a specific client or clients that would benefit from his services but states generally that his services would add value to any business that contracts with them. Yet, the Petitioner did not provide documentation to support these statements that his endeavor will result in substantial economic growth on the level of national importance. The record does not illustrate how creating eight jobs and generating the projected sales in the business plan would have substantial positive economic effects on the level of national importance. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has therefore not provided sufficient information and evidence to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance.

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

[2] We use initials to protect the privacy of individuals.

appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility for a national interest waiver under the third prong of the *Dhanasar* analytical framework. *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).

ORDER: The appeal is dismissed.