U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31839823

Date: JUL. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 had not established eligibility for 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. 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.

To establish eligibility for a national interest waiver, petitioners must 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if:

- The proposed endeavor has both substantial merit and national importance,
- The individual is well-positioned to advance the proposed endeavor, and
- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

At the outset, the Director acknowledged that the Petitioner qualified as a member of the professionals holding an advanced degree or its equivalent.[2] Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The attorney's cover letter indicated the Petitioner's proposed endeavor was as follows:

> ". . . to contribute and positively impact the school environment of the United States, by carrying out a project of mediation and conflict resolution, through cultural and pedagogical practices. Mr. [redacted] project will be named [redacted] and will be primarily focused on writing, where participants create texts, promoting peacebuilding. This will be carried out in Educational Institutions in the United States, through the use of their phones, the Petitioner will project on a screen what is being written by the students around the different topics proposed by the facilitator."

In the request for evidence (RFE), the Director acknowledged that the Petitioner's proposed endeavor has substantial merit. However, the Director requested evidence that the Petitioner's proposed endeavor had national importance, he was well-positioned to advance the proposed endeavor and on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In response to the Director's RFE, the Petitioner provided a proposed endeavor statement, a national importance statement and a business plan. The Petitioner also submitted two letters of recommendation and several articles from various government, non-governmental and international organizations in support of his substantial merit and national importance argument. The Director subsequently denied the petition.

On appeal, the Petitioner accurately points out that the Director erroneously referred to the Petitioner's proposed employment as a "Consultant in the Field of Healthcare" and refers to the Petitioner's involvement in the healthcare industry and providing healthcare services. However, despite this anomaly, the Director fully addressed the Petitioner's actual proposed endeavor in conflict resolution. The Director noted that the Petitioner planned to open a conflict resolution consultancy focusing on the art of mediation amongst young men and women to ensure peaceful classrooms and reiterated that the Petitioner's proposed endeavor as a "Consultant with the goal of benefiting school age Americans in classrooms has substantial merit." Therefore, we determine this mischaracterization to be harmless error.

As it relates to substantial merit, the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. The record contains sufficient evidence of the substantial merit of the Petitioner's initial proposed endeavor, and we therefore agree with the Director's findings.

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 specific endeavor that the

[2] The Petitioner presented copies of his diploma and transcripts for his master's degree in Conflict Resolution and a juris doctor degree from the [redacted]

foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner provided several articles from various government, non-governmental and international organizations in support of his substantial merit and national importance argument, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing his particular mediation and conflict resolution services among young men and women in school.[3] 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.

Further, as indicated above, the Petitioner presented two recommendation letters from individuals who praised the Petitioner's past work in the field of mediation and conflict resolution among the youth. However, these letters discuss the importance of confliction resolution rather than focusing on the national importance of the Petitioner's specific, proposed endeavor. In addition, the letters do not explain how the Petitioner's particular services would have broader implications for our country. 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. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how his services largely influence the field and rise to the level of national importance. In *Dhanasar*, we determined 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. The record does not show through supporting documentation how his endeavor sufficiently extends beyond his prospective employer or clients, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not show how his endeavor involving conflict resolution services has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to his particular future work, the record does not show any benefits to the U.S. regional or national economy resulting from his services that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

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. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[4]

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

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[3] The Petitioner's arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national importance part.

[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where applicants do not otherwise meet their burden of proof).

ORDER: The appeal is dismissed.