U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32384147

Date: JUL. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur with a background in accounting, 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 that the Petitioner's proposed endeavor had prospective national importance, that he was well-positioned to carry out the proposed endeavor, or that a waiver of the labor certification requirement was beneficial. 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.

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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*. at 889.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Id.* at 890-91.

II. ANALYSIS

The Petitioner is an entrepreneur with a background in accounting. He intends to open and operate a business and managerial consulting firm. He notes that he will assist U.S. companies to make sound financial decisions, offer advice to streamline their operations and improve sales, and help to improve overall profitability.

The Director found the Petitioner qualified for underlying EB-2 classification as a member of the professions holding an advanced degree. However, the Director determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification from a U.S. employer. Specifically, the Director concluded that while the record established that the proposed endeavor has substantial merit, the national importance of the endeavor had not been demonstrated under prong one. The Director also determined that the Petitioner was not well positioned to carry out the endeavor under prong two, and that the Petitioner had not shown that a waiver of the job offer

requirement would be beneficial as required by prong three. We agree the Petitioner has not established the national importance of the endeavor, as required under the first prong of *Dhanasar*.

A. The Petitioner Has Not Demonstrated that His Endeavor Has National Importance

On appeal, the Petitioner argues that he submitted a detailed business plan outlining the number of proposed employees and revenue projections over a five-year period. He notes that in areas of lower income, providing jobs is a means of increasing the general economy of the area. He contends that the Director found the evidence to be insufficient because the supporting evidence was not carefully reviewed. He notes that he will be providing services to companies of varying sizes nationwide, which will in turn have a large impact on the economy; the work he will do to expand businesses will have a substantial economic impact by providing higher wages and boosting domestic and international markets. He highlights his acceptance into a [redacted]-area business incubator program. In addition to contesting the Director's analysis of *Dhanasar*'s first prong, the Petitioner makes various additional arguments that he has satisfied the criteria in prongs two and three.

In support of these contentions, the Petitioner has submitted evidence including, but not limited to: a business plan detailing his intention to operate a business consulting firm; company formation and operating agreements; letters of support from business associates; diplomas and certificates; employment history; an expert opinion regarding his eligibility for a national interest waiver; and articles providing context and background on the consulting industry and the impact of business growth on the economy.[2]

The Petitioner has not satisfied the first prong of the *Dhanasar* framework requiring a proposed endeavor to be of national importance. Although the Petitioner highlights his lengthy history of entrepreneurial ventures and argues that his efforts will have a broader impact on the economy via his client's businesses, these factors are insufficient to demonstrate national importance. 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. The Petitioner asserts that the improvements he will make within companies will result in increased profitability; this in turn will cause the companies to raise wages and hire workers and will therefore improve the economy. However, the cited impact is speculative and is not supported by specific forecasts of jobs that will be created because of the Petitioner's specific endeavor. Although the evidence reflects the Petitioner's intention to provide valuable services for his clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance.

The Petitioner also highlights that his abilities in business management will have a positive effect on the American workforce, as he will improve business acumen and ability in the individuals for whom he will consult. 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. *Id*. at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to

[2] We are aware of and have reviewed letters of support submitted on appeal that detail the Petitioner's prospective impact, past work, and acceptance into an entrepreneurial incubator program. However, these letters were written in late 2023. As they do not contain details of when the Petitioner achieved the listed benchmarks, we are unable to determine their relevance to his eligibility for the requested benefit at the time the Petition was filed in 2022.

sufficiently extend beyond his clientele to impact the consulting industry, the accounting industry, or otherwise impact economic initiatives more broadly at a level commensurate with national importance.[3]

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects. Specifically, he has not shown that the company's future staffing levels, business activity, associated tax revenue, and financial initiatives stand to provide substantial economic benefits in Florida or Texas or in the United States generally. While the business plan indicates that the company has growth potential, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. In addition, the Petitioner has not offered sufficient evidence that the projected 11 employees would represent a significant population of workers in that area, or that the endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. The expert opinion letter characterizes this job creation and the tax payroll revenue as significant but does not specifically analyze by what measure the listed projections are significant in Florida, Texas, or nationally. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of the proposed endeavor, as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve opinion on whether the Petitioner could satisfy the second and third prongs to qualify for a national interest waiver. *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 alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not shown that the proposed endeavor is of national importance. Because he has not met the first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[3] The Petitioner has provided, and we have reviewed, a substantial number of documents outlining the importance of businesses to the national and global economy. However, the *Dhanasar* framework instructs us to evaluate the impact of the specific proposed endeavor, rather than the field or industry generally. *Dhanasar*, 26 I&N Dec. at 889.