U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32484114

Date: JULY 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a chief executive officer (CEO), seeks employment-based second preference (EB-2) immigrant classification as 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 that the Petitioner is eligible for, and merits as a matter of discretion, a 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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. Our precedent decision in *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,[3] 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

A. EB-2 Classification

The Director found that the Petitioner did not qualify for the underlying EB-2 classification as an individual of exceptional ability,[4] but did not offer an analysis to support her conclusion.[5] Nevertheless, as the resolution of the issues pertaining to the Petitioner's eligibility for a waiver of the job offer requirement, and thus of a labor certification, under the *Dhanasar* analytical framework is dispositive of this appeal, we will reserve consideration of the Petitioner's eligibility for the requested EB-2 category. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule 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 D-L-S-*, 28 I&N Dec. 568, 577 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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

[4] The Petitioner does not claim, and the record does not indicate, that he qualifies for the EB-2 immigrant classification as an advanced degree professional.

[5] The Director found that the Petitioner met at least three of the six criteria initially required to show eligibility as an individual of exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii). After reviewing the record, we question whether the evidence, in fact, contains evidence that the Petitioner has met the criteria showing: (1) a license to practice the profession or certification for a particular profession or occupation, and (2) evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations under 8 C.F.R. § 204.5(k)(3)(ii)(C), (F). However, since the conclusions we will reach below regarding the Petitioner's failure to satisfy *Dhanasar's* first prong preclude this petition's approval, we will not address these shortcomings any further, other than to place the Petitioner on notice that he should be prepared to address them in any future NIW filings. In addition, the Petitioner does not address the Director's finding that the criterion to show evidence of membership in professional associations was not satisfied. That issue, therefore, is waived on appeal. *See, e.g., Matter of F-C-S-*, 28 I&N Dec. 788, 792 n.6 (BIA 2024) (declining to address determinations not challenged on appeal).

B. Substantial Merit and National Importance

The Petitioner proposes to work as a CEO operating his own company, which will specialize in stationery, visual communication, and digital printing products and services.[6] He states he will offer quality products and services at competitive prices to individuals and companies in Florida and then expand to other states.

The Director concluded that the Petitioner's endeavor has substantial merit but not national importance under *Dhanasar's* first prong. Upon de novo review, we agree for the reasons stated below. We note that, while we do not discuss every piece of evidence individually, we have reviewed and considered the whole record.

On appeal, the Petitioner asserts that the Director imposed "novel substantive and evidentiary requirements" and a stricter standard of proof than that of a preponderance of the evidence. However, he does not elaborate on these claims or point to specific instances where the Director applied novel requirements or an incorrect standard of proof. Additionally, with respect to the *Dhanasar* analytical framework, the Petitioner contends, among other things, that the Director "did not give due regard" to the evidence submitted, suggesting that the Director did not properly weigh his previously submitted resume, business plan, evidence of his work in the field, letters of recommendation, and industry reports and articles, which he claims show his endeavor's national importance.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and 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 889-90.

Here, the Petitioner has not offered sufficient evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In support of his claim, the Petitioner submitted various articles and reports, including documents discussing entrepreneurship and small businesses. The Petitioner contends the articles demonstrate the "significant impact of the role that

[6] The Petitioner's documents submitted below and on appeal appear to indicate that his endeavor would also include some type of business consulting services. For example, at one section of his appellate brief, the Petitioner describes his proposed endeavor as "optimizing business functions for U.S. companies," and he asserts he will "create value for U.S. organizations" by, among other things, "improv[ing] performance, achieved by providing objective advice regarding the optimization of business processes using respected industry methodologies, as well as implementing effective sales development, sales, and marketing techniques." Additionally, in his Definitive Statement, he states his aim is to "enhance the revenue of U.S. companies, thereby improving their productivity and market growth." He claims this will "elevate the business landscape of the United States" and "position it as a global business hub." However, the Petitioner's various descriptions of these activities, which are seemingly related to business consulting generally versus his future work operating a stationery, visual communication, and digital printing company, are so sparse, unclear, and lacking in meaningful detail that we cannot even *conduct* a meaningful analysis of them under the *Dhanasar* framework, let alone conclude any such analysis in the Petitioner's favor. We cannot, and therefore will not, address this portion of the endeavor any further.

business professionals play in every type of business" and the beneficial economic implications thereof, which he claims are matters of national importance.

The articles and reports, however, provide only general background information on these subjects and do not specifically relate to or discuss the Petitioner's proposed endeavor, including how his endeavor might impact these areas more broadly, such that it rises to the level of national importance. While we acknowledge the overall value of business professionals, entrepreneurs, small businesses, and the sales and marketing industry generally, the pertinent question is not the importance of the field, industry, or profession in which the individual will work. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Simply working in an important field is insufficient to establish the proposed endeavor's national importance. Likewise, while the Petitioner submitted articles emphasizing the importance of immigrant entrepreneurs to the economy, these documents are also insufficient as they do not discuss the Petitioner's particular endeavor itself or elaborate on why it, specifically, is nationally important.

The Petitioner also does not adequately explain how acting as the CEO and owner of a stationery, visual communication, and digital printing company in Florida—the specific endeavor proposed here—would have such broader impact in the sales, marketing, or business industry that it rises to the level of national importance. For example, in the Petitioner's Definitive Statement, he makes general claims that his endeavor will "contribute to access to innovation, new business practices, economic prosperity, and overall enhanced societal welfare." He also contends his endeavor will "generate American jobs, increase national and international integration and productivity, and enhance revenues for the U.S. economy at large." However, aside from these vague assertions, he provides little detail explaining how his proposed endeavor will accomplish these objectives or how providing his services would have such broader implications extending beyond his customers that it would have regional or national impacts. General conclusory statements without a sufficiently direct evidentiary tie between the proposed endeavor and the claimed economic or other impacts are insufficient. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner also has not shown that his proposed endeavor has a significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. On appeal, the Petitioner claims that his proposed endeavor "has the potential to significantly contribute to the U.S. economy through job creation and economic impact." According to the business plan, the Petitioner intends to employ seven people with a revenue of $496,387.50 in the first year of operation, increasing to 33 people with a revenue of $1,938,562.50 by the fifth year of operation. He also expects to create 165 indirect jobs through partners, suppliers, and the franchise model.

The Petitioner's business plan, however, provides little explanation for the basis of these projections and does not sufficiently elaborate on how the proposed employment numbers will impact the area of intended operations, including in HUBZones. Moreover, even if the endeavor's revenue and job creation projections were more than conjecture, the Petitioner has not adequately demonstrated how his proposed endeavor would generate such significant economic activity that it rises to the level of "substantial positive economic effects" as contemplated by *Dhanasar*. While any basic economic activity has the potential to positively impact the economy, the Petitioner has not offered a sufficiently direct connection between his proposed endeavor and any demonstrable economic effects in Florida

or the United States. The Petitioner's references to abstract tax revenue, job creation, and other unspecified economic benefits rely on more generalizations about the results of typical business activity, rather than providing probative information about what the Petitioner plans to accomplish through the endeavor and how it may have national importance.

We also are not persuaded by the Petitioner's claim that his proposed endeavor has national importance due to the "steep shortage" of professionals with his profile in the field. There is little evidence that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner's reliance on his 26 years of knowledge and experience in the sales and marketing industry to illustrate his proposed endeavor's potential prospective impact is also misplaced. In support of his claim, the Petitioner submitted an expert opinion letter written by an associate professor at [redacted] and reference letters written by clients. However, the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar's* second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of the proposed endeavor itself.

Here, the professor generally discusses the Petitioner's skills and experience and asserts the Petitioner's services will help U.S. companies improve their operations, as well as achieve better productivity and profitability levels, which will generate revenue and create employment opportunities. He also makes sweeping claims that the Petitioner's endeavor will "indisputably benefit U.S. employers and the U.S. economy as a whole." However, the opinion letter does not offer specific details on how the Petitioner's endeavor would accomplish these goals or how any impact would extend beyond the direct companies and clients that the Petitioner will serve. Rather, the letter focuses on the Petitioner's expertise, the general importance of an economic partnership between Latin America and the United States, the immigrant workforce, and the value of small businesses.

Likewise, while the letters of support from the Petitioner's clients praise the Petitioner's personal attributes and good customer service, these are considerations under *Dhanasar's* second prong. The letters lack detail regarding the Petitioner's proposed endeavor and its specific impact thereof, including discussion of any potential broader implications of his future work. Without more, the expert opinion and other support letters provide little probative evidence of the Petitioner's eligibility under *Dhanasar's* first prong.

The Petitioner offers only generalized claims about his endeavor's national importance on appeal. While he claims in his Definitive Statement that his endeavor will have a "substantial impact in the U.S. market" and will play a "pivotal role" in the United States' economic recovery after the COVID-19 pandemic, he does not meaningfully analyze how his specific endeavor meets the national importance requirement as defined in *Dhanasar* or provide sufficient independent, objective evidence to substantiate his claims. Without adequate evidence demonstrating any specific U.S. economic impact, job creation, or other significant economic activity directly attributable to his future work, the Petitioner's claims that his endeavor will provide substantial, positive economic effects is unpersuasive.

The Petitioner bears the burden of proof to demonstrate his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. Because the Petitioner has not established through sufficient evidence in the record that his proposed endeavor meets the first prong of the *Dhanasar* framework, he has not demonstrated eligibility for a national interest waiver. Since the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining issues and arguments concerning whether he has established eligibility for the EB-2 classification, as well as eligibility under the remaining two *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We, therefore, conclude that the Petitioner has not established that he is eligible for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.