U.S. Citizenship and Immigration Services

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

In Re: 33134863

Date: JULY 31, 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 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. The Director concluded that the Petitioner does not qualify for classification as an individual of exceptional ability; however, the Director did not specify in the decision whether, in the alternative, the Petitioner qualifies for classification as a member of the professions holding an advanced degree. The Director also concluded that the Petitioner had not established that 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 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 (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.*

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. *See id.* at 888-91, for elaboration on these three prongs.

## II. ANALYSIS

As noted above, the Director concluded that the Petitioner does not qualify for classification as an individual of exceptional ability. The Director did not specify in the decision whether, in the alternative, the Petitioner qualifies for classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act. However, in a prior request for evidence (RFE), the Director concluded that the Petitioner does not qualify, in the alternative, as a member of the professions holding an advanced degree. *See id.* The record does not clarify why the Director addressed whether the Petitioner may qualify for a national interest waiver if he was ineligible for second-preference classification, as the Director concluded.

Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See* section 203(b)(2) of the Act; *see also 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"); *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).

The Petitioner described the endeavor as a plan to work as a "market development executive" for his own "content production company," located in the [redacted] Texas, metropolitan area. The record contains an informational document regarding the company, which generally asserts that the company can "work hand in hand with artists, government entities, and non-profit foundations, creating employment in different areas." However, the record does not clarify the number of workers whose employment the proposed endeavor may create, which employer(s) would hire those workers, the workers' job title(s) and duties, and other information regarding the employment the proposed endeavor may create. More specifically, the record does not establish the number of workers the

[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).

Petitioner's company intends to hire, what those workers' job title(s) and duties may be, and other information regarding the employment the proposed endeavor may create. In turn, the document asserts that the company's "focus is mainly on communities with limited access to culture and entertainment, prioritizing emerging artists of any nationality who lack institutional support or support [sic]." However, the record does not elaborate on the actual target demographic and the referenced artists with whom the company would work.

The Director observed that the record does not establish how the "proposed endeavor has implications beyond [the Petitioner's] current employer (or prospective employer), their business partners, alliances, and/or clients/customers and his prospective co-workers/employees or workplace at a level sufficient to demonstrate the national importance of his endeavor." Therefore, the Director concluded that the record does not establish the proposed endeavor has national importance, as required by the first *Dhanasar* prong. The Director indicated in the RFE that the proposed endeavor has substantial merit, also required in part by the first *Dhanasar* prong; however, in the decision the Director concluded that the record does not satisfy the second and third *Dhanasar* prongs. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner summarizes generalized and intangible value of films and other forms of culture, and he reiterates that the proposed endeavor has national importance because his company will "address and create awareness around social issues through audiovisual productions supported by government initiatives." The Petitioner also references the total monetary amount of grants the National Endowment of the Arts (NEA) has recommended for fiscal year 2024, and generalized information regarding governmental budgeting.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *See Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that the Petitioner's references to generalized information regarding NEA grants and governmental budgeting do not address the Petitioner, his proposed endeavor, and how the proposed endeavor may have broader implications. As addressed above, the relevant question for determining national importance is not the importance of the industry, field, or profession in which an individual will work; rather, we consider whether the potential prospective impact of the specific proposed endeavor may have broader implications. *See id.*

We next note that the Petitioner's references to the generalized and intangible value of films and other forms of culture address whether the proposed endeavor has substantial merit, as required in part by the first *Dhanasar* prong. However, the national importance aspect of the first *Dhanasar* prong considers whether an endeavor may have "national or even global implications within a particular field," such as the particular field of documentary filmmaking, not merely whether an endeavor is in

a field with merit. *See id.* *Dhanasar* provides "certain improved manufacturing processes or medical advances" as examples of how an endeavor may have such broader implications. The record does not establish how the proposed endeavor of operating the Petitioner's "content production company" and working in some generalized way with unspecified artists and unknown audiences in unstated locations may have the type of effect on the field of documentary filmmaking—or any other field—with "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" contemplated by the first *Dhanasar* prong. *Id.* Merely contributing to an industry or field in the same way as others, without more, does not establish how an endeavor may have national importance. *See id.*

In turn, the record does not establish that the Petitioner's company will employ any worker other than himself, nor does it establish unspecified other workers for other unspecified employers in unspecified locations whose employment the proposed endeavor may indirectly create. Therefore, the record does not establish how the proposed endeavor may have "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area," as another example of factors that may demonstrate national importance. *Id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

## III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.