U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31284795

Date: JUNE 3, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is an entrepreneur who intends to operate his own financial and accounting consulting services firm. He seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business, 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 Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Applying the three-prong analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director concluded that the Petitioner: (1) did not establish that his endeavor has national importance,[1] (2) did not demonstrate that he is well-positioned to advance the endeavor, and (3) did not show that on balance, waiving the job offer requirement would benefit the United States. *Id.* 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 because the Petitioner did not establish that his specific proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *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).

Further, we adopt and affirm the Director's analysis and decision regarding the national importance of the Petitioner's 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

[1] The Director concluded that the Petitioner's endeavor has substantial merit.

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).

In addressing the issue of national importance, the Director discussed the Petitioner's proposed endeavor to own and operate an accounting and financial services consulting firm where he will act as "CEO [and] head of consulting." The Director acknowledged the Petitioner's submission of supporting evidence, which includes a business plan, the Petitioner's résumé, and industry reports and articles, noting that the provided industry reports do not discuss the proposed endeavor and therefore do not establish the endeavor's national importance. The Director also noted that the Petitioner did not explain how he arrived at the revenue and job creation projections in his business plan, nor explained how he plans to realize those projections.

Further, the Director determined that the evidence does not demonstrate that the prospective impact of the Petitioner's endeavor would rise to the level of national importance, pointing out that the evidence does not show that the impact of the endeavor would extend beyond the Petitioner's organization and its clients to broadly impact the field of the endeavor – in this case the field of financial services.

And regarding the Petitioner's plan to operate his business in a HubZone, the Director noted that the Petitioner did not state that his company will participate in the U.S. Small Business Administration's HubZone program. Further, the Director stated that despite his intent to operate in a HubZone and employ 33 workers by his company's fifth year of operation, the Petitioner did not establish that the hiring projections in the business plan demonstrate his endeavor's significant potential to create substantial positive economic effects in a HubZone community.

On appeal, the Petitioner alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard . . . to the detriment of the Appellant." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that he has provided evidence sufficient to demonstrate eligibility for the EB-2 classification and a national interest waiver, he does not further explain or identify a specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

The Petitioner does not further pursue or address the Director's concerns regarding prior assertions about the Petitioner's intent to operate his business in a HubZone. Rather, the Petitioner contends that his endeavor will "generate substantial effects upon key commercial and business activities on behalf of the United States" thus indicating that the impact from his endeavor will go beyond his business and the clients he plans to serve. However, the Petitioner does not provide evidence showing that his work as the owner of a consulting firm would result in an impact of regional or national importance or that he would operate on such a scale as to create an impact at the national importance level.

In addition, the Petitioner highlights his business plan as evidence of his endeavor's national importance, stating that the plan offers a "detailed plan for creating jobs through managing and developing his business in the U.S." However, as noted above, the Director specifically mentioned the Petitioner's business plan and explained how it falls short of demonstrating the national importance of the proposed endeavor, but the Petitioner did not address the Director's concerns. And while the Petitioner also highlights his credentials and work experience, evidence of the Petitioner's knowledge, skills, education, and experience involves considerations that pertain to *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 Petitioner's credentials and professional experience do not demonstrate the national importance of the proposed endeavor or establish that the impact of that endeavor would extend beyond the Petitioner's company and prospective clients.

Lastly, the Petitioner refers to articles containing research about "the important role that business development professionals play in every type of business." The Petitioner asserts that such articles demonstrate his endeavor's national importance "due to its economic implications." We disagree. The articles address broad topics such as entrepreneurship and small businesses, as well as the role of immigrants in the workforce. The articles do not, however, discuss the proposed endeavor and thus they are not sufficient to demonstrate that the endeavor is likely to result in "substantial positive economic effects" at a level that is commensurate with having national importance. *Id.*

In sum, the Petitioner has not provided evidence that his endeavor meets the national importance element of the first prong of the analytical framework in *Matter of Dhanasar.* Because the Petitioner has not overcome the Director's conclusion regarding this issue, he has not established that he merits a national interest waiver.

ORDER: The appeal is dismissed.