U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30968881

Date: JUN. 07, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a CEO and entrepreneur in the transportation security field, 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 Nebraska Service Center denied the petition, concluding that although the Petitioner established his eligibility for EB-2 classification as an advanced degree professional, he did not demonstrate 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 establish eligibility for a national interest waiver, a petitioner must first 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish 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 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v. Garland,* 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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.

II. ANALYSIS

The Petitioner has a law degree and has worked primarily in the law enforcement, public safety, and security field within police and military organizations. He indicates that he will own and operate a transportation security company in the United States and serve as the company's CEO. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be addressed is whether the Petitioner established that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest.

In evaluating the Petitioner's request for a national interest waiver, the Director concluded the record did not demonstrate that he is well-positioned to advance his proposed endeavor, and that, on balance it would benefit the United States to waive the job offer requirement. For the reasons provided below, we conclude that the Petitioner did not establish his eligibility for a national interest waiver under the *Dhanasar* framework.

To determine whether an individual is well positioned to advance their proposed endeavor under the second prong of the *Dhanasar* framework, 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. *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Petitioner initially submitted evidence of his academic qualifications, training certificates, awards, resume, reference letters from former colleagues, and an expert opinion letter which addresses his eligibility under the *Dhanasar* framework. He also provided a business plan for his proposed endeavor, [redacted] which he described as "already open in the [United States] but not yet operating." The Petitioner indicates that [redacted] "secures and patrols transportation, cargo, freight and other related activities" and will seek to provide these services to "large companies and chains to provide a recurring service."

The Petitioner completed his law degree in 2003 and from 2004 until 2016, worked in [redacted] military and police organizations as a senior sergeant, archivist, representative lieutenant, senior detective, and senior security specialist. His responsibilities included maintaining and protecting government archives, protecting civilians and government facilities, organizing training and seminars, preventing and investigating crime, and contributing to the implementation and operation of a victim and witness protection program. The Petitioner has been in the United States since 2016 and indicates that he has owned and operated a California-based logistics company called [redacted] since 2021. He states that his duties for this company include loading and unloading cargo, making on-time deliveries, keeping records of deliveries and driving hours, communicating with clients, and maintaining and inspecting trucks and equipment.

In a request for evidence (RFE), the Director advised the Petitioner that the submitted reference and expert opinion letters, training certifications, awards, and resume indicate that most of his work experience and past achievements are unrelated to his proposed entrepreneurial endeavor to serve as CEO of his own transportation security business. The RFE further noted that he had not demonstrated that he has made progress towards achieving the proposed endeavor or shown that he has attracted the interest of potential customers, users, investors or other relevant entities or individuals. The Director provided an extensive list of the types of evidence the Petitioner could submit to demonstrate that he is well-positioned to advance his proposed endeavor, noting that such evidence could include: evidence demonstrating his leading or critical role in similar endeavors, evidence that his prior work has influenced his field, correspondence from prospective clients or customers, documentation reflecting feasible plans for financial support or investment in the new endeavor, copies of contracts or agreements related to the endeavor, and evidence of his prior achievements in the field of endeavor, among others.

In response to the RFE, the Petitioner resubmitted his business plan and resume, provided certificates for various security training courses he completed in July 2023, and documented his registration as a "guard" with the California Bureau of Security and Investigative Services as of July 2023. A cover letter accompanying the response stated that the Petitioner was submitting "various statements" from his clients and colleagues which "acknowledge his track record of distinguished achievements," "excellent customer service," and "significant contributions throughout all stages of his company."

However, the only additional reference letter submitted was from a lieutenant colonel in the [redacted] armed forces who states that he served alongside the Petitioner as a member of [redacted] delegation to the United Nations' peacekeeping operation in Sierra Leone. The author emphasizes the Petitioner's "dedication to world peace," his "selfless service" and his "willingness to assist in humanitarian efforts," but does not speak to his previous successes in activities related to his proposed endeavor to act as the chief executive of a transportation security business.

The Director determined that the Petitioner's response was insufficient to overcome the deficiencies raised in the RFE and therefore concluded he had not met his burden to demonstrate that he is well-positioned to advance the proposed endeavor. On appeal, the Petitioner contends that the record demonstrates his "past track record of achievements" and "the concrete interest, and need, of U.S. companies in benefiting from his vast expertise in the high-growth industry of business services." He further maintains that his business plan, resume, and the previously submitted reference letters establish that he has "top level professional experience and acumen as an entrepreneur in the field of business," experience working with customers and companies, a track record of success in related efforts, and the support needed to carry out his proposed endeavor.

We note that the Petitioner's reference letters, training certificates, awards, and commendations evidence his skills and qualifications in the law enforcement and police protection fields. The Director did not question the Petitioner's qualifications, experience or record as a police and military officer in the decision denying the petition. Rather, they found that the record was lacking evidence of other indicators that he is well positioned to advance his proposed entrepreneurial endeavor in the transportation industry.

We agree that the Petitioner has not sufficiently demonstrated a record of success as a founder and CEO of an entrepreneurial enterprise. In his personal statement, the Petitioner explained that, as CEO of

[redacted] he will establish business strategies, processes, and objectives, supervise key accounts, manage relationships, define the company's scope of work, develop short- and long-term plans, develop investment, financial and tax strategies, manage the budgeting process, develop performance measures, and oversee daily operations and the recruitment and hiring process. While the record shows that the Petitioner had some supervisory or leadership responsibilities during his time in the military police, the record does not establish that he has previously performed duties comparable to those he states he intends to perform in the United States.

The Petitioner also states that he has already started and is successfully operating a transportation or trucking business called [redacted] but he does not indicate that he performs the above-described CEO duties for this company; rather he indicates that his duties as the company's owner include loading cargo, making deliveries, and performing other operational and administrative functions. Further, although the Petitioner documented his incorporation of this California corporation in 2021, he has not provided supporting evidence documenting this company's activities or operations. Therefore, while his claimed experience with [redacted] may be relevant to demonstrating his track record in a similar endeavor, the record contains insufficient evidence to establish his accomplishments with this company.

We have also considered an expert opinion letter provided by a U.S. university professor. In addressing the Petitioner's eligibility under *Dhanasar*'s second prong, the author notes the Petitioner's academic qualifications, and summarizes his employment history in military and policing roles. He concludes, without further explanation, that "it is clear to see that he is extremely qualified in the field of Transportation Security" has "more than fifteen years of experience" in this field and in "business structure as a whole," and is "at the top of his field." However, as noted, the Petitioner's employment history reflects that most of his experience is unrelated to his proposed entrepreneurial endeavor. Therefore, the record does not support the Petitioner's claim that he demonstrated his "top level professional experience and acumen as an entrepreneur in the field of business," and "a track record of success in related efforts."

In response to the Director's determination that he did not demonstrate that potential customers and investors have expressed interest in the proposed endeavor, the Petitioner points to previously submitted media and industry articles and reports as evidence that there is a high demand for the types of services he intends to provide through his company. Although the Petitioner has also claimed that he was submitting reference letters from clients or customers who rely on his services in the United States, this evidence is not in the record, and he does not reference it on appeal.

Dhanasar's second prong does not merely require evidence that there is a general industry demand for the products or services a given petitioner intends to offer in the United States. Rather, it indicates that a petitioner may submit evidence of "the interest of potential customers, users, investors, or other relevant entities or individuals" in their specific endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 890. Here, the business plan states that the Petitioner's intended business will primarily target large companies with chain operations, but the record does not contain supporting evidence elaborating on how the Petitioner, which anticipates a staff of 15 drivers and 15 security guards within five years, will secure contracts among large firms or show that such companies have expressed interest in using the services of the Petitioner's start-up company for their transportation security needs in the United

States. As noted, the record lacks evidence of any existing contracts or agreements with clients or interest from any potential customers.

Finally, beyond asserting that he has a well-defined business plan and has "the support needed to carry out the proposed endeavor," the Petitioner does not contest or otherwise address the Director's conclusion that the record does not contain evidence of his progress towards achieving the proposed endeavor. Although the business plan indicates that [redacted] was established in 2022 and would commence operations in [redacted] California in 2023, the record does not document the company's incorporation or physical location. The business plan indicates that this company would require an initial investment of $75,000 from the Petitioner but does not document the availability of these funds or the actual investment, nor does it detail the company's anticipated start-up expenses. Further, as noted above, the record lacks the requested evidence of "interest from potential customers, investors or other relevant individuals." The record does not establish that the Petitioner had taken any concrete steps toward implementing the business plan before filing the petition or while it was pending.

Therefore, for these reasons, the Petitioner has not established he is well positioned to advance the proposed endeavor.

B. Reserved Issues

Because the Petitioner has not established his eligibility under the second prong of the *Dhanasar* framework, we need not address his eligibility under the remaining prongs and hereby reserve them. *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 an applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not met the second prong of the *Dhanasar* analytical framework. As such, we conclude that he 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.