U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31160563

Date: JUN 11, 2024

Appeal of Nebraska 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 a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner qualified for a national interest waiver. The matter is now before us on appeal. 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." *Id.* 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 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director determined that the Petitioner qualified as a member of the professions holding an advanced degree. The remaining issue to be determined on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

In response to a request for evidence (RFE) requesting clarification of the Petitioner's proposed endeavor, he provided the following in a statement:

> [The Petitioner's] proposed endeavor is to start his own business as a sales manager. He intends to build a platform for what are referred to as "bounced leads" [or] leads that businesses have paid for through marketing but for some reason cannot follow up on. Businesses can theoretically give those leads to friendly competitors and therefore share the cost of the lead for which they have already paid. [The Petitioner] also plans to conduct customer development research, using the Lean Startup methodology . . . . He will create an MVP (Minimum Viable Product), which is a version of a new product that allows a team to collect the maximum amount of validated learning about customers with the least effort.
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> . . .
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> Once he has an MVP which he can use to test, he is planning to test it for a product market fit. Product market fit is the degree to which a product satisfies a strong market demand. Once he has demonstrated that the has a valid business model and sustainable growth, he intends to apply for seed funding from a variety of incubator firms . . . .

The Director concluded that the Petitioner did not clearly describe his endeavor and, therefore, did not establish it had substantial merit or national importance. On appeal, the Petitioner asserts that the Director did not evaluate his proposed endeavor as described in the RFE response. Upon review and as more fully discussed below, the Petitioner has not sufficiently demonstrated the national importance of his endeavor in order to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

[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 to be discretionary in nature).

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. *Dhanasar*, 26 I&N Dec. at 889.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated 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 890. Further, 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. 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.

The Petitioner initially provided the following with regard to his proposed endeavor:

> Upon achieving the milestone of my company attaining a billion-dollar valuation and reaching unicorn status, I intend to establish a fund aimed at providing starting capital and employment opportunities for immigrants like myself, enabling them to embark on their entrepreneurial endeavors in the United States.
>
> In essence, my objective is to effect positive change within the United States by fostering the creation of job opportunities for local American citizens who contribute significantly through their income taxes. To realize this vision, I plan to obtain a Permanent Residence permit (commonly referred to as a green card) and initially engage in employment within the country. This approach will grant me valuable insights into existing market gaps that I can subsequently address through the establishment of a high-growth startup enterprise. By doing so, my ultimate aim is to bolster the US GDP and enhance the overall well-being of local American citizens.

The Petitioner's proposed endeavor to create job opportunities has substantial merit. However, although the ultimate goal of a proposed endeavor may be to enhance societal welfare, we must consider the endeavor's significant potential to prospectively do so.[2] This wide-ranging aspiration to "bolster the US GDP and enhance the overall well-being of local American citizens" is vague; the Petitioner did not provide probative evidence sufficient to demonstrate the prospective impact of his endeavor. He provided letters from two individuals interested in hiring him as a sales manager and generally anticipated the interest of wealthy investors, but he did not provide evidence to substantiate the interest of any investor in his specific business endeavors. The Petitioner initially submitted

[2] *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

documentation related to the current presidential administration's small-business initiatives, the impact of the global pandemic, the economy, entrepreneurship, and immigration, but this material provided only general information on these topics. This evidence did not provide insight into any specific plan formulated by the Petitioner to develop a platform attracting, as he described, "venture capitalists or angel investors" to help fund his company. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Further, the Petitioner has not sufficiently explained how he would execute his proposed endeavor. The Petitioner did not discuss any logistics necessary in carrying out his endeavor. For example, he did not explain with sufficient detail how he would implement his research and launch his proposed platform at a scale that would have a national impact. It is noteworthy that the Petitioner does not discuss or document any previous experience undertaking a similar project, and the record indicates that his previous experience was as a sales manager. The Petitioner's lack of experience in such research or an undertaking similar to that described is relevant to whether his proposed endeavor can credibly be undertaken and carried out successfully within a realistic timeframe such that it would benefit the United States on a national scale. These considerations are essential to an assessment of the proposed endeavor's potential prospective impact, and they do not reflect an endeavor that, more likely than not, would materialize on the expansive level envisioned by the Petitioner.

The Petitioner initially asserted that there is a shortage of sales managers and submitted an article discussing "a growing crisis in sales talent," and he reiterates this on appeal. However, he does not explain how his intention to fill a single position as a sales manager would alleviate an asserted national shortage of sales managers. The importance of a purported nationwide issue does not confer national importance on the Petitioner's proposed endeavor to work as a sales manager. Again, in determining national importance within the *Dhanasar* framework, the relevant question is not the importance of the field, industry, or profession in which the individual will work, but the specific endeavor that the individual will undertake. *Id.* at 889.

On appeal, the Petitioner cites previously submitted documentation discussing White House initiatives to narrow racial wealth disparities between small businesses and encourage individuals to pursue entrepreneurial ambitions. The Petitioner asserts the following:

> [The Petitioner's] proposed endeavor supports this goal by providing small businesses with sales talent and skills needed to reach more customers and make sales, increasing revenue. Thus, [the Petitioners] proposed endeavor to use his expertise to develop a digital marketing platform is aligned with federal priorities to aid small businesses.

This statement is vague, and the Petitioner does not support his assertion with an explanation of how his proposal to create a platform for businesses to share leads or, as he also stated, "conduct customer development research" and create an unspecified "Minimum Viable Product" would impact the White House's small business initiatives on a national level. The Petitioner's general assumptions about the impact of his proposed endeavor do not serve as objective evidence of its national importance .

The Petitioner also pointed to his education and USCIS Policy Manual guidance recognizing the importance of progress in STEM fields and the essential role of individuals with advanced STEM degrees. However, a degree, alone, does not demonstrate the prospective positive impact of the

recipient's proposed endeavor, and we note that the USCIS Policy Manual addresses STEM degrees as evidence to consider under the second prong of the *Dhanasar* adjudicative framework, not the first. The portion of the USCIS Policy Manual relating to STEM states that we may conclude that a STEM endeavor has national importance when the evidence sufficiently demonstrates that it would help the United States to remain ahead of strategic competitors or current and potential adversaries or when it relates to a field where appropriate activity and investment may contribute to the United States achieving or maintaining technology leadership or peer status among allies and partners.[3] The Petitioner has not explained how his proposed endeavor to develop a platform to assist businesses in sharing leads would position the United States ahead of other nations or achieve or retain technology leadership or peer status with other countries. And given his insistence on the importance and potential impact of his endeavor, it is notable that he did not address whether or why similar platforms do or do not already exist.

The Petitioner has not provided independent evidence to support—or otherwise explained—how his project would have a prospective national impact on any locality or the United States overall. The Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the nation. As such, the Petitioner has not demonstrated that the prospective benefits to the regional or national economy resulting from his endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *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 is otherwise ineligible).

III. CONCLUSION

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.

[3] *See generally* 6 USCIS Policy Manual F.5(D)(2).