U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30873604

Date: JUNE 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and treasurer/controller, 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 Texas Service Center denied the petition, concluding that although the Petitioner qualified as an advanced degree professional, he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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.

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 USCIS may, as matter of discretion,[2] 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.

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[1] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

[2] *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 Petitioner proposed to continue in his career in the United States as a treasurer and controller. He stated that he intended "to work with companies in various industries by applying [his] treasury expertise and business controllership knowledge to develop feasible financial plans, recover profitability, and seize new investment and market opportunities abroad." In response to the Director's notice of intent to deny, the Petitioner provided a business plan showing he would be the managing partner and chief financial officer (CFO) of his company, [redacted] located in Florida. Through his company, the Petitioner explained that he "will propose to its clients a broad menu of financial, audit, controls and tax consulting and advisory services with emphasis on the financial."

The Director determined that the Petitioner's proposed endeavor did not have substantial merit or national importance. However, evidence in the record establishes that the Petitioner's proposed endeavor has substantial merit, and we withdraw the Director's determination to the contrary.

Turning to the national importance of his proposed endeavor, the Petitioner contends the Director did not give due regard to the evidence submitted, specifically his resume, business plan, documentation of his work in the field, letters of recommendation, and industry reports and articles. He asserts that he has demonstrated the national importance of his proposed endeavor consistent with the first prong of the *Dhanasar* framework.

The first prong of the *Dhanasar* framework, 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. We look for broader implications in the Petitioner's field or industry. An 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 889-890.

As a preliminary matter, the Petitioner's initial description of his proposed endeavor did not state that he would be the managing partner and CFO of his own company, established in April 2022, almost two years after the petition filing. A petitioner must meet eligibility requirements at the time of filing. *See* 8 C.F.R. § 103.2(b)(l). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

In support of national importance, the Petitioner highlights staffing and revenue projections in the submitted business plan projecting that his company would employ 25 employees and generate $5.80 million in revenue, all within its first five years of operation. However, these employment and revenue projections are not supported by details showing their basis, nor do they sufficiently demonstrate a significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Specifically, the record does not support that the creation of 25 additional jobs in this sector or the expected revenue generated by the company would have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework.

In addition, the Petitioner states that his company is "in a [sic] SBA HUBZone area that will help to fuel small business growth in historically underutilized business zones."[3] However, the Petitioner has not offered sufficient evidence to establish that his business would operate in a HUBZone area. Further, he did not indicate that his endeavor would participate in the HUBZone program or that it would be eligible to do so. Moreover, while the Petitioner states that his company "will generate jobs for U.S. workers in these underutilized areas, improving the wages and working conditions for the U.S. workers, and helping the local community bring investments to the region," the Petitioner has not provided evidence that the area where his company intends to operate is economically depressed, that it would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue. While his intentions are meritorious, the Petitioner has not provided corroborating evidence to support his claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *Chawathe*, 25 I&N Dec. at 376.

Further, the Petitioner relies, in large part, on his more than 28 years of experience in the field of finance to establish the national importance of his proposed endeavor. However, the Petitioner's expertise and record of success in previous positions are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of his proposed endeavor.

The Petitioner also emphasizes the importance of the financial services industry and submitted industry reports and articles discussing the industry. 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 specific endeavor that the foreign national proposes to undertake." *See id.* at 889. 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.* While the Petitioner proposes to work in an important industry or field, this is not necessarily sufficient to establish the national importance of the specific proposed endeavor. Further, the articles and reports do not discuss any particulars of the Petitioner's proposed endeavor or its prospective impact rising to the level of national importance.

In *Dhanasar*, we determined 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. Likewise, the Petitioner has not established how providing his financial services stands to sufficiently extend beyond his clients to impact the field more broadly at a level commensurate with national importance. We acknowledge that the Petitioner asserts his proposed endeavor stands to affect the national economy by developing and implementing "innovative business models that create new economic value, while enhancing the financial capabilities and competitiveness of U.S.-based companies and financial institutions that are involved in both national and cross-border economic projects." Further, we note that the Petitioner contends that "[s]uch actions will then incentivize the financial capabilities of individual investors and clients, ranging from both national and foreign markets." The Petitioner,

[3] Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized business zones, with a goal of annually awarding at least 3% of federal contract dollars to HUBZone-certified companies annually. *See* "HUBZone Program," https://www.sba.gov/federal-contracting/contracting-assistanceprograms/hubzone-program.

however, has not provided evidence demonstrating that his proposed business activities would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the asserted potential prospective impact of his proposed endeavor stands to offer broader implications in his industry or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States.

Finally, we reviewed the Petitioner's letters of recommendation where the authors praise the Petitioner's abilities in the financial services industry and his personal attributes, indicating that he would be an asserted asset to the workplace. However, the letters of recommendation do not offer persuasive detail concerning the impact of his proposed endeavor and how it would extend beyond his clients. As such, the letters are not probative in demonstrating the Petitioner's eligibility under the first prong of *Dhanasar*.

Because the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Since 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). We also reserve a determination on the Petitioner's eligibility for the underlying immigrant classification.[4]

[4] Although we will not address this issue further, the Director determined that the Petitioner is a member of the professions holding an advanced degree. However, upon de novo review, we disagree. The Petitioner provided a copy of his foreign degree and transcript, which show he began his studies in February 1993 and completed them in December 1996. According to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE) entry for the *Título de Bacharel,* it is awarded following three to five years of undergraduate study and only the four-year program is the foreign equivalent of a U.S. bachelor's degree. While we acknowledge the submission of an academic evaluation concluding the Petitioner's *Título de Bacharel* is the foreign equivalent of a U.S. bachelor's degree, based upon the information in EDGE and the length of the program as reflected in the transcript, we question its accuracy. As such, the Petitioner has not established that he is a member of the professions holding an advanced degree or the equivalent in the field. In any future filing in this matter, the Petitioner should address this issue and submit appropriate documentation.

We consider EDGE to be a reliable source of information about foreign credential equivalencies. *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano,* No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013). For more information, visit https://www.aacrao.org/edge.

ORDER: The appeal is dismissed.