U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31474219

Date: JUNE 13, 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 a member of the professions holding an advanced degree and 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, concluding that the Petitioner qualified for EB-2 classification, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest**.** On appeal, the Petitioner submits a statement and asserts that he is eligible for the benefit sought. 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.

To qualify for a national interest waiver, a petitioner must first show eligibility 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:

- 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.

[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).

The Director concluded that the Petitioner did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we conclude that the Petitioner has not met the first prong of the *Dhanasar* framework and will dismiss the appeal accordingly.

The first *Dhanasar* 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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.

In the initial filing, the Petitioner stated that his proposed endeavor was to open a "Business Training and Consulting company" in Florida. He further detailed that the products and services he would provide covered the areas of "Strategic, Financial, and Accounting Management, in addition to coaching and people management for high-performance companies and leaders, which will be offered in-person or online." The Petitioner submitted, among other documents, a business plan.

The Director issued a request for evidence in which they requested, in part, additional evidence to establish that the Petitioner's proposed endeavor had substantial merit and national importance. The Director noted that without specific details of the Petitioner's proposed endeavor and how the Petitioner would achieve said endeavor, USCIS was unable to determine that the proposed endeavor had substantial merit and was of national importance.[2]

In response to the request for evidence, the Petitioner stated that his proposed endeavor fell within the areas of business and entrepreneurialism and thus, he had established substantial merit. Regarding the proposed endeavor, the Petitioner provided an updated business plan and explained that he would continue advancing his coaching and investment ventures by taking advantage of his years of experience as a training and development specialist to establish a business training and consulting business in Florida. He again stated that his services will cover "the areas of Strategic, Financial, and Accounting Management, as well as coaching and people management for companies and high-performance leaders offered both in person and online." He asserted that his proposed endeavor would result in the growth of the local market and the overall well-being and prosperity of the United States by "strengthening its business ecosystem and workforce and facilitating economic development" through job creation, economic grown, innovation, and competitiveness. The Petitioner did not provide further detail on the specific prospective occupation or proposed endeavor that he would focus on to illustrate the nature of the work that he would perform during his day-to-day work activities. Nor did the Petitioner provide a consistent, detailed description explaining the manner through which he

[2] The Director also requested additional documentation to establish the second and third *Dhanasar* prongs.

would prospectively deliver these services, supported by documentary evidence as requested by the Director.

The Director denied the petition, concluding that the record did not establish that the Petitioner qualified for a national interest waiver because he did not meet the 3-prong *Dhanasar* framework. In regard to prong one, the Director determined that the record did not demonstrate the proposed endeavor had national importance. The Director concluded that the Petitioner had not established that the potential prospective impact of the Petitioner's specific proposed endeavor stood to sufficiently extend beyond the individuals he would serve, to impact the IT industry or field more broadly.

On appeal, the Petitioner submits a statement in which he reasserts his experience and background and his eligibility for a national interest waiver based on the evidence of record. He again states that his proposed endeavor is to establish and operate a business training and consulting business, where the "products and services are covered by the major areas of Strategic Management, Financial and Accounting, and coaching and people management for companies and high-performance leaders, offered in person or online." He also reiterates that his endeavor will "directly contribute to the nation's economy by creating jobs and generating taxes."

The Petitioner's general objections on appeal regarding his eligibility for the EB-2 classification, without identifying any specific errors on the part of the Director, are insufficient to overcome the conclusions the Director reached based on the evidence submitted by the Petitioner. The Petitioner has not articulated on appeal how the Director erred in finding that the record did not demonstrate the proposed endeavor has national importance. While the evidence of record (including several letters of recommendations lauding the Petitioner's talents and professionalism) indicates that the Petitioner has extensive experience, the record does not include a plan or other indication of how the Petitioner will operate a "business training and consulting business" that will impact business at the level of national importance contemplated under the first prong of the *Dhanasar* framework. The Petitioner has not established on appeal that his intent to apply his knowledge to his prospective clients is an activity that will have a broad impact.

As for the Petitioner's assertion on appeal that his proposed endeavor will create jobs and contribute to the nation's economy, he has not demonstrated that the endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. *See Id.* at 890. Absent probative evidence to show the realistic potential of the Petitioner's company to operate at all, it is not evident that the company will generate revenue to create jobs, to expand, or to otherwise notably impact the economy in a location in which it intends to operate. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's pursuits as a consultant for businesses would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Id.* The record does not offer evidence sufficient to translate *how* the Petitioner's specific work stands to sufficiently impact U.S. interests or the relevant business and consulting business more broadly at a level commensurate with national importance.

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 reason for dismissal is 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 a noncitizen is otherwise ineligible). The petition will remain denied.

ORDER: The appeal is dismissed.