U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31200867

Date: JUN. 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a public relations specialist, 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 established his eligibility for EB-2 classification, 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 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. [2]

II. ANALYSIS

The Petitioner earned a Master of Arts in Communication in 2018 from the [redacted] At the time of filing, the Petitioner's résumé indicated that he was pursuing a Ph.D. in Strategic Communication at [redacted] working as an adjunct professor at the same university, and teaching a Creative Presentation course at [redacted] Between 2006 and 2015 he was head of global advertising and branding at [redacted] in Brazil, a mining company.

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree, and the record supports this conclusion. Therefore, the primary issue on appeal is whether the Petitioner meets the requirements of the three prongs of the *Dhanasar* analytical framework and otherwise merits a national interest waiver as a matter of discretion. In denying the petition, the Director addressed all three prongs of the *Dhanasar* framework and concluded that the Petitioner did not demonstrate that he meets any of them. On appeal, the Petitioner asserts that he established that a waiver of the job offer requirement would be in the national interest and contends that the Director did not objectively evaluate all the submitted evidence.

For the reasons provided below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. Proposed Endeavor

The Petitioner identified his proposed occupation as a public relations specialist on the Form I-140, Immigrant Petition for Alien Worker. He provided that he planned to "[e]ngage in promoting or creating an intended public image for individuals, groups, or organizations. May write or select material for release to various communications media." The Petitioner initially submitted a Professional Plan & Statement dated 2020, indicating:

> Upon completion of my PhD program, I plan to apply for positions with PR firms and/or other U.S. Entities in need of reputation management or an updated communications/messaging platform. Ideally, I will prospect opportunities within U.S. Businesses, and I will also offer my services on a consultancy capacity - serving both American organizations, as well as foreign entities wishing to expand their services and/or products to the U.S. Market.
>
> . . . .
>
> I will continue my career as a public relations specialist, using my expertise in distinctive business areas to drive profitable opportunities for the U.S. marketplace. . . . In this way,

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

> I will build and create PR campaigns that garner global appreciation and enhancement of my serviced companies, brands, organizations, and clients. This will lead to the subsequent expansion of wealth and business into new markets, thus culminating in foreign direct investment (FDI), cross-border deals, employment for U.S. workers, and overall enhanced national economic patterns. Moreover, my work will also protect U.S. organizations from the damage caused by reputational crises.

Within the Petitioner's response to the Director's request for evidence (RFE), the Petitioner submitted a document titled "Personal Statement and Future Plans" dated 2023,[3] in which he claimed that he intended to conduct applied research in the field of risk and crisis communication as follows:

> The project that I am currently working as a full-time Postdoctoral Associate at the [redacted] is an interdisciplinary effort titled [redacted] The project is funded by the National Oceanic and Atmospheric Administration (NOAA) . . . .
>
> . . . .
>
> My work will be part of the broader contribution to the Cooperative Institut[e] for Research to Operations in Hydrology (CIROH). I am working along with a large team of social, ecological, and physical scientists, as the sole communication representative in the [redacted] sub-project [to] develop crisis and risk communication strategies associated with flood and other water hazard risks . . . .

As the Director noted, the Petitioner initially claimed he intended to work as a public relations specialist as an employee or consultant to U.S. businesses, to "create PR campaigns that garner global appreciation and enhancement of my serviced companies." However, in response to the Director's RFE, the petitioner asserted for the first time that he intended to work as an applied researcher in the field of crisis and risk communication associated with water hazards. The Petitioner acknowledges on the Form I-290B, Notice of Appeal or Motion, that the information about the initial proposed endeavor "was from a long time ago and his plans have changed since the time of original filing." His appeal provides new articles about his changed proposed endeavor.

The Director concluded, and we agree, that the RFE response presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see also Dhanasar*, 26 I&N Dec. at 889-90. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (requiring a noncitizen to qualify for a proposed job by the time of a petition's filing). A petitioner also may not materially change a petition after its filing. *Matter of Izummi*, 22 I&N Dec. 169, 175 (AAO 1998). For the reasons stated in *Katigbak* and *Izummi*, we conclude that the Director did not err by basing the decision on the Petitioner's initial proposed endeavor, which was to work as a public relations specialist. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of applied researcher.

[3] The Petitioner's RFE response also contained his Ph.D. degree in Strategic Communication from [redacted] earned in 2022.

B. Substantial Merit and National Importance

To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that his proposed endeavor has both substantial merit and national importance. This prong of the *Dhanasar* framework focuses on the specific endeavor 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. As stated, the Director concluded that the Petitioner did not meet his burden to establish the national importance of the endeavor.

In support of his claim that the proposed endeavor has national importance consistent with the first prong of the *Dhanasar* framework, the Petitioner initially provided published articles and reports addressing the importance of business reputation risk management, international companies to the U.S. economy, and cultural competency to international brand success. When determining national importance, however, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of his specific, proposed endeavor of providing his particular public relations services rather than the importance of the occupation or the industry or field. 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.*

Specifically, the Director determined that the Petitioner had not shown how his proposed endeavor would have broader implications within his field that would reach beyond clients utilizing his services, or that it would broadly enhance societal welfare. In this regard, the Director observed that the Petitioner's claims that the proposed endeavor would help businesses expand and increase company sales did not appear to extend beyond his clients and customers to demonstrate the national importance of his endeavor. The Director further observed that the record did not demonstrate that the proposed endeavor has significant potential to employ U.S. workers, would impact an economically depressed area, or would have benefits to the regional or national economy that would reach the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890.

For the reasons provided below, we agree with the Director's determination that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework. We have considered evidence related to the Petitioner's proposed activities as a public relations specialist within unidentified U.S. businesses or as a consultant.[4] The Petitioner has not shown how the public relations services he intends to provide would have broader implications in the field of public relations or business reputation risk management.

The Petitioner contends on appeal that he has submitted documentation sufficient to corroborate the economic benefits of his proposed endeavor through his personal statements submitted with the petition and the RFE response. However, the Petitioner did not show that his initial proposed endeavor

[4] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that any benefits to the U.S. regional or national economy resulting from his public relations services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, while the Petitioner contends that his proposed endeavor will create cross-border financial initiatives between the U.S. and Brazil, he has not shown, for example, that the prospective impact of the public relations services performed by him would represent a significant share of the public relations services market or offered projections on the amount of foreign direct investment likely to be generated.

Further, the Petitioner has not supported a claim that his initial proposed endeavor is likely to, for instance, introduce innovations that may have broader implications in the public relations or business reputation risk management field. Although the proposed endeavor may benefit the client companies and individuals that engage the Petitioner's services, the record does not sufficiently show that such benefits, either individually or cumulatively, would rise to the level of national importance. 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. As the Director noted, the record does not provide adequate support for a determination that his specific proposed endeavor will have such a wide-reaching impact.

We also stated in *Dhanasar* 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. Here, the Petitioner has not offered sufficient evidence identifying the area where his initial proposed endeavor would operate; that it is economically depressed; that his company 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 or business activity.

Moreover, in his personal statements and appellate brief, the Petitioner emphasized his professional experience in the field. The record also contains recommendation letters from former colleagues and his employer in Brazil. While important, the Petitioner's expertise acquired through his academic and professional career primarily relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong. A determination regarding the claimed national importance of a specific proposed endeavor cannot be inferred based on the Petitioner's past accomplishments, just as it cannot be inferred based on general claims about the importance of a given field or industry.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from an adjunct professor of business, entrepreneurship, and sports management at [redacted]. Much of the letter discusses the Petitioner's work experience as a business manager and public relations specialist in Brazil with [redacted]. In addressing the first prong of the *Dhanasar* framework, he describes the fiscal landscape in Brazil and the current market challenges for foreign companies doing business there. The letter concludes that "as a seasoned Business Manager and Public Relations Consultant who possesses an intimate knowledge of the Corporate Communication field in Brazil and other International markets, there is no doubt that he would work in the United States in an area of substantial merit and

national importance." However, the author does not indicate how the Petitioner's Professional Plan & Statement supports a determination that the initial proposed endeavor has significant potential to employ U.S. workers or has other substantial positive economic effects, or how it has national implications within the field of public relations or business reputation risk management.

We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's initial proposed endeavor.

In light of the above conclusions, the Petitioner has not met his burden of proof to establish that he meets the first prong of the *Dhanasar* national interest framework. Because the Petitioner has not established his proposed endeavor has national importance, he is not eligible for a national interest waiver under the *Dhanasar* analytical framework. 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 his eligibility under the second and third *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude he has not demonstrated eligibility for, or otherwise merits, a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.