U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31263225

Date: JUN. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in real estate, 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 the record did not establish that the Petitioner merited a national interest waiver, as a matter of discretion. 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;

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).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 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 concluded that the Petitioner qualified as an advanced degree professional. 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.

The Petitioner's business plan describes his proposed endeavor as follows:

> [The Petitioner] will bring his experience and skills to the U.S. He will advise foreign investors interested in the country's real estate sector, bringing international investments to America and fomenting the construction of affordable housing in the country.
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> . . .
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> [The Petitioner] will attract Brazilian and Portuguese investors to develop new real estate projects in the U.S. and connect these individuals to U.S. partners operating in the construction sector. Through his Company, [the Petitioner] will serve as a bridge between foreign investors and operators in the U.S. real estate market for the development of multiple projects. Therefore, [the Company] will not be a typical brokerage company, but rather a business dedicated to fostering foreign investment in the U.S. real estate sector. [The Petitioner] will organize various events to present investment opportunities in the U.S. to Brazilian and Portuguese individuals, showcasing them the advantages of investing in the country, including the diversification of their assets through investments in a strong currency: the U.S. dollar.

The Director concluded that, while the Petitioner's proposed endeavor had substantial merit, he did not demonstrate that his proposed endeavor had national importance. On appeal, the Petitioner asserts that the Director erred in this conclusion and contends the provided evidence demonstrates the national importance of his proposed endeavor. For the reasons discussed below, we agree with the Director that 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.

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.

On appeal, the Petitioner points to reports and articles provided in support of the petition discussing the housing market in the United States. While this material provides general information related to the field in which the Petitioner intended to work, it does not provide insight into his plan to operate a real estate investment consultancy company or show how this specific endeavor would have a potential prospective impact of national importance.

The Petitioner's business plan provides an overview of his plans for his company's operation and describes positions he will hire, potential marketing efforts, and profit projections. However, the business plan is not supported by objective evidence to demonstrate how his company would have a prospective national impact on the field or on an economy of any scale. For example, the business plan anticipates hiring 20 individuals, accruing $753,829 in payroll expenses, and generating $1,150,318 in sales by the conclusion of its fifth year of operation. The plan further states that the Petitioner's "ability to attract vast sums from foreign investors will continue to bring substantial benefits to the U.S. economy as a whole," and it anticipates "attracting a total of approximately $85 million in foreign funds into the United States" over five years. The plan does not, however, provide an objective basis for these projections, nor are the numbers corroborated by probative evidence sufficient to demonstrate that it is likely the company will have a positive national economic impact or a national prospective impact within the field. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The business plan also includes a Regional Input-Output Modeling Systems (RIMS II) analysis to demonstrate the company's potential impact on the region in which it intended to operate. It states that the multipliers for the category of Real Estate Industry in Florida project "a final-demand impact in employment, equivalent to 280 jobs in Year 5" and revenues of $1,150.318. The Petitioner has not sufficiently demonstrated that RIMS II's broad category of "Real Estate Industry in Florida" properly captures the potential impact of his proposed endeavor to attract foreign investment to develop housing. He has therefore not shown that these general statistics on a broad category of economic activities substantiate the national importance of his proposed endeavor. Moreover, the RIMS II modeling tool relies on various assumptions, including those made by the Petitioner, leaving the prospective impact of his proposed company uncertain. The Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor based on its potential job creation or impact on the U.S. economy.

In addition, the Petitioner has not demonstrated that his proposed endeavor would serve to impact the industry or field more broadly, rising to the level of national importance. For instance, it is not clear how the Petitioner's operation of a company seeking foreign investment in real estate would have a positive economic impact at the level of "substantial economic effects" contemplated by *Dhanasar*.

Id. at 890. While the business plan references a report stating that the United States "faces one of the most alarming talent crunches of any country worldwide," we observe that fluctuating opportunities within the general labor market do not demonstrate that the Petitioner's endeavor stands to have an impact on the real estate industry or otherwise have implications rising to the level of national importance. Finally, the business plan asserts that his "background and his willingness to transfer his skills and knowledge to the U.S. market will help create a qualified real estate workforce" because he will be "transferring his knowledge to local professionals." 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. Similarly, here, the record does not sufficiently demonstrate that the Petitioner's individual training efforts would have the national impact contemplated by *Dhanasar.*

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. Specifically, he has not shown that his business stands to provide substantial economic benefits to any particular locality or to the United States overall. While the business plan explains in general terms that his company's services would benefit the U.S. economy because foreign investments "can stimulate economic growth by injecting capital into the economy," that reasoning is speculative and not based on any objective evidence related to his specific proposed endeavor. As such, the business plan does not demonstrate that the prospective benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner states of his proposed endeavor, "The rationale underlying this project stems from the increasing unaffordability of housing for millions of individuals in the United States." Although the Petitioner claims that his company will positively benefit the United States by increasing development to address housing shortages, it is not clear how a business of the size and scope described in the business plan would raise funding in amounts that would address housing shortages for a number of people that would constitute an impact on a national level. Also unclear is how a business employing twenty people by its fifth year of operation would positively impact a given region in which either its employees or clients are located. The Petitioner has not provided sufficient evidence to show that he would employ a significant population of workers in a particular region, nor has he shown that his proposed endeavor would offer a region or its population substantial economic benefits through employment levels, business activity, or tax revenue.

We note that the Petitioner emphasizes that his proposed endeavor aligns with White House initiatives to increase the availability of affordable housing in the United States. While the notion of addressing affordable housing issues that affect individuals nationwide may align with the goals of certain White House initiatives, the Petitioner has not provided evidence that he has developed an actionable concept that would prospectively benefit the United States at a level commensurate with national importance. The prospective impact of the Petitioner's proposed endeavor is unsubstantiated, and the endeavor is not proportionate to White House initiatives intended to have a national impact. Again, as per the *Dhanasar* adjudicative framework, we focus not on the national importance of the field, industry, or profession in which the individual will work, but on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

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 met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.