U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31303153

Date: JUN. 18, 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, 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 the Petitioner's eligibility for the requested 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. 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).

Once 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 a 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.

II. ANALYSIS

The Director determined that the Petitioner qualified as an advanced degree professional but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons discussed 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. National Interest Waiver

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 the initial filing, the Petitioner asserted his intention to "seek employment as the founder and owner of a business in a much needed field of freight transportations," adding that the "freight and cargo industry is the lifeblood of the United States economy." According to the Petitioner, while he previously sought a national interest waiver due to his experience in craftsmanship, "the COVID-19 pandemic . . . changed [his] plans . . . [and he] decided to contribute [his] transferable skills and start [his] own transportation company." The Petitioner asserted that his endeavor of "founding and managing a company in the transportation industry will have only direct benefits in that it will provide critically important services, create jobs, and will stimulate economic activity." In support of his endeavor, the Petitioner submitted a personal statement, a commercial driver's license (CDL), copies of his personal and corporate tax returns, incorporation documents for his company, D- Transportation, LLC, and evidence of the company's ongoing customer engagements. Notably, even though the Petitioner indicated he was inspired by the COVID-19 pandemic to establish his transportation company, the evidence showed that the company was established in 2018 and had been actively doing business since 2019.

Following the Director's request for evidence (RFE) requesting additional information and evidence to establish the national importance of his endeavor, the Petitioner submitted a new personal statement, a business plan for D- Transportation, LLC, an expert opinion letter and various articles and reports discussing increased demand for freight transportation following the COVID-19 pandemic,

[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).

disruptions in supply chains caused by the pandemic, and shortages of truck drivers in the United States. The Petitioner asserted that "[g]iven the current shift to online orders and the growing need for delivery services [the need for his services] in this field [is] of paramount importance." In his updated personal statement and business plan, the Petitioner elaborated on his goal "to elevate the standards of these services by offering value-added benefits to his clients[,]" which he asserted would "make a significant impact on the logistics and transportation industry." According to his business plan, the company would initially "focu[s] on freight turnover across the U[nited] S[tates], including carrying truckloads from destination to destination," and "hauling freight from suppliers to manufacturers to distributors and retailers, operating in partnership with distribution centers, warehouses, and wholesalers." Additionally, he stated his company would offer "tracking and logistic management solutions for business clients," including freight broker services, truck dispatch services, assistance in finding loads, assigning loads and managing drivers, maintaining motor carrier compliance, managing weather delays, providing customer care, and managing billing and paperwork.

The Director concluded that, while the evidence established the substantial merit of the Petitioner's endeavor, the record did not show that the endeavor would result in broader implications to the industry commensurate with national importance have significant potential to employ U.S. workers, or otherwise result in substantial economic benefits contemplated in *Dhanasar*.

On appeal, the Petitioner asserts that he submitted "persuasive evidence to support his claims." Yet, beyond referencing the broad assertions in his business plan, the Petitioner does not identify what evidence or information he believes persuasive in supporting his claims, nor does he elaborate on how this information refutes the Director's conclusions. Likewise, while the Petitioner expresses general disagreement with the Director's conclusions, he does not specify how the Director erred or what factors in the decision were erroneous. As an appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision, this omission alone is grounds for dismissal. *See* 8 C.F.R. § 103.3(a)(1)(v). Nevertheless, for the reasons discussed below, we agree with the Director's conclusion that the proposed endeavor, while substantially meritorious, does not have national importance.

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

On appeal, the Petitioner continues to rely on the trucking industry, as well as the importance of entrepreneurship in general, to assert the national importance of his endeavor. Specifically, the Petitioner maintains the broad implications of his endeavor by stating that "entrepreneurship, particularly in sectors such as transportation and logistics often goes hand in hand with innovation." He further asserts that his "expertise in this field can lead to the development of innovative solutions that streamline supply chains, enhance logistical efficiency, and bolster the overall competitiveness of U.S. businesses." Yet, the Petitioner does not identify how the services he intends to offer would

benefit the field more broadly beyond the immediate benefit to his prospective customers. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. 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. *Dhanasar* at 893. Similarly, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his business and its customers to impact his field more broadly at a level commensurate with national importance, including the logistics and trucking industry and the trucking workforce, as asserted.

We also agree with the Director that the record does not establish the Petitioner's endeavor would result in significant economic benefits as contemplated in *Dhanasar*. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would rise to the level of national importance. In the business plan, the Petitioner indicated that by the fifth year of operations he anticipated generating total sales of $2,300,000 while employing 25 individuals, resulting in an annual payroll expense of $1,378,668. Notably, the Petitioner indicated that 16 of his 25 employees would be truck drivers, however, the Petitioner did not elaborate on how he intended to recruit 16 truck drivers in a five-year period given the stated shortage of truck drivers. Similarly, the business plan does not provide sufficient explanation for the basis of his financial and employment projections.[2] But even if the endeavor's revenue and job creation projections were sufficiently explained and supported, they do not establish that his company would operate on a scale rising to the level of national importance and the Petitioner has not explained how his proposed employment numbers and revenue would impact his company's area of intended operations.

Finally, we have reviewed the provided expert opinion letter, but conclude that the letter provides little probative value in establishing the national importance of the Petitioner's proposed endeavor. The expert opinion letter provides conclusory statements discussing the importance of the trucking industry and the logistics field in general, including the expected growth of the industry, without specifically addressing the broader implications directly attributable to the Petitioner's company. When evaluating the national importance of a proposed endeavor, the importance of the industry is not sufficient to establish national importance, instead we focus on the broader implications of "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. 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 lacks relevance to the national importance of the Petitioner's proposed endeavor.

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[2] While not a basis for our decision, we note that the record shows the Petitioner's business has been in operation for more than two years prior to the filing of this petition; however, the actual earnings identified in the tax returns are a third of the amount projected in the business plan for the corresponding years of operation. Moreover, the record does not include evidence of hiring consistent with the stated employment projections. While a petitioner is not required to show that a proposed endeavor is more likely than not to ultimately succeed, the Petitioner may want to address this in any future filings.

For the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

B. Eligibility for the Underlying Classification

While the petition must be dismissed as the Petitioner has not satisfied prong one of the *Dhanasar* framework, upon a de novo review of the record, we question whether it contains sufficient evidence to establish that he is eligible for the EB-2 immigrant classification as an advanced degree professional. Specifically, the submitted evidence does not establish that the Petitioner obtained at least five years of progressive post-baccalaureate experience "in the specialty" as required by 8 C.F.R. § 204.5(k)(2). First, the record contains inconsistent information regarding the Petitioner's experience between January 2005 to March 2017. While the Petitioner has provided a letter stating he was self-employed during that time, "engaged in artistic work," and "in product marketing and business development activities," he has not provided evidence to corroborate his statements that he was engaged in business development activities like "concluding contracts [and] negotiating," nor has he clarified how this experience sufficiently relates to owning and operating a trucking company. Moreover, in apparent contradiction, the Petitioner indicated on his signed U.S. Department of Labor ETA Form 750B, Statement of Qualifications of Alien, that his prior employment was solely as a "carpet weaver" in the "artisan" field.

Nevertheless, as the resolution of the issues pertaining to the Petitioner's eligibility for the requested national interest waiver under the first prong of the *Dhanasar* analytical framework is dispositive of this appeal, we will reserve consideration of the Petitioner's eligibility for the requested EB-2 category[3], as well as his asserted eligibility under *Dhanasar*'s second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion, and the appeal will be dismissed.

ORDER: The appeal is dismissed.

[3] That said, the Petitioner should be prepared to address this issue in any future filings requesting EB-2 immigrant classification as an advanced degree professional.