U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31141903

Date: JUNE 18, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, National Interest Waiver)

The Petitioner, a business administrator who seeks to provide consulting and management services, 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, 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. 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 qualify for a national interest waiver, a petitioner must first show eligibility for the underlying EB-2 visa classification at section 203(b)(2)(A) of the Act, 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.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualifies for EB-2 immigrant classification as a member of the professions holding an advanced degree based on his degree in business administration from [redacted] one year of graduate level study in marketing management from [redacted] and 25 years of progressive experience in sales, sales management, marketing, and distribution of beer, soft drinks, dried fruits, and grains for various entities in Colombia, and the record supports that conclusion. However, the Director denied the Petitioner's national interest waiver request, concluding that he had not established the national importance of his proposed endeavor under the first prong of *Dhanasar*, and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification, as required under third prong.

A. Substantial Merit and National Importance

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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

Regarding his claim of eligibility under *Dhanasar's* first prong, the Petitioner initially recounted his prior career in Colombia involving various positions such as sales and marketing for a brewery, distribution of soft drinks, and production and distribution of dried fruit and grains. The Petitioner stated that he would like to use his prior experience to provide consultant services "to benefit small and medium sized companies by improving their performance and identifying business opportunities" and would contribute to the development of other entrepreneurs by increasing their own businesses' profitability and competitiveness. The Petitioner further stated that he would conduct market research to determine the economic profitability of each product and company in order to maximize the company's profits and increase investment, collect information from customers and suppliers to make a business plan for each need, and share his knowledge and provide necessary training for sales personnel. The Petitioner stated that he will carry out market studies and analyze prospective clients' profiles in order to give "correct advisory service." The Petitioner further claimed that he will:

[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).

> [L]ook for entrepreneurs, medium and small businesses, or organizations with an opportunity to improve customer service or looking for market expansion, where there is a great participation of the community according to the needs.

Additionally, the Petitioner asserted that business development experts are a critical part of the United States' growth and that professionals such as himself are needed to assist the growth of small businesses, especially in the aftermath of the COVID-19 pandemic. The Petitioner indicated that he has already identified [redacted] Texas as a starting place for his proposed business consulting endeavor and claimed to have had contact with some companies that expressed an interest in his services. As evidence of the prospective interest in his services, the Petitioner provided a letter from an individual who asserts that he runs a party rental company in an unspecified location and would like to hire the Petitioner once he gets a work permit for the purpose of "e-commerce application in . . . event logistics, social networks, website, service portfolio, rental and even organization."

With respect to his claim that the proposed endeavor has substantial merit, the Petitioner provided articles discussing the critical role of small businesses in generating U.S. economic activity, profiling small businesses, and discussing why such businesses fail. He also included Whitehouse fact sheets regarding the President's 2021 American Jobs Plan, the 2022 small business boom, and the 2023 state of the U.S. economy. Additionally, the Petitioner provided news articles on the cooling U.S. labor market in 2023 to indicate the need for additional job creation and the President's 2021 American Jobs Plan. The record therefore supports the Director's determination that the Petitioner's proposed work as a business administrator/consultant who intends to help other entrepreneurs and large and small business endeavors has substantial merit.

The Petitioner maintains on appeal that he established the national importance of his proposed endeavor by a preponderance of the evidence and that the Director failed to fully assess all of the previously provided documents, citing to *Matter of Bul*etini, 850 F. Supp. 1222, 1223 (E.D. Mich. 1994) (finding that failure to consider all of the relevant evidence is an abuse of discretion). The Petitioner does not include new evidence on appeal, instead requesting that his previously provided evidence be considered.

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 Matter of 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.

In his appeal brief, the Petitioner reasserts his prior claims regarding his proposed endeavor, again claiming that he "will help entrepreneurs and [subject matter experts] to improve their performance, identify new business opportunities, maximize . . . profits, strengthen their sales strategies, and design their brand image implementing marketing strategies to promote [their brand]." The Petitioner further

argues that the impact of his proposed work "will be reflected by the increased profitability and competitiveness of the company as well as the generation of jobs."

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. The Petitioner's statements reflect his intention to provide valuable business development and sales and consulting services for his future individual employers and clients which he asserts generally are critical to the United States' growth and the growth of small businesses. However, apart from one letter from a prospective client, he has not offered any other information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. With respect to the letter from the prospective client who runs a party rental business, the letter does not indicate where the business is located or other information about the company and its business that would help identify the scope of the company's current or intended activity, such that we can assess the potential economic effect of the Petitioner's prospective services. 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. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his potential employers and clientele to impact the business administration field or U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Petitioner's statements express his intent to provides services to entrepreneurs, small businesses, and multinational entities, and he indicates that he will begin his endeavor in [redacted]. However, as discussed above, the single letter from a party rental business does not contain information showing, for example, where the potential client is located, the size of the company, the nature and scope of its operations, and what type of services that the Petitioner would provide to the company. 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 business consulting projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver on this basis alone.

B. Well-Positioned to Advance the Proposed Endeavor

As an additional matter, we disagree with and hereby withdraw the Director's conclusion that the Petitioner had established that he was well-positioned to advance the proposed endeavor under the second prong of the *Dhanasar* framework.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge, and record of success in related or similar efforts; a

model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

We recognize the Petitioner has earned education and has skills and knowledge in his discipline of business administration. However, simply having education, skills, and/or knowledge does not place a petitioner in a position to advance their proposed endeavor. This is only one factor amongst many factors which are evaluated together to determine how well positioned a petitioner is to advance a proposed endeavor. Although the Petitioner submitted his statements describing a general plan or model for future activities in the United States, the record does not reflect he has made any progress to achieving the proposed endeavor in a manner sufficient for us to evaluate how well positioned he is to advance it. Finally, the recommendation and work experience letters the Petitioner submitted speak of the Petitioner's competent execution of past job duties in sales, sales management, and distribution for entities in Colombia; however, the competent execution of past job duties, even successfully, does not automatically render a petitioner well positioned to advance their proposed endeavor. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). Here, the evidence in the record does not sufficiently describe how well situated the Petitioner would be to advance his proposed endeavor and, as a consequence, he does not meet the second prong of the *Dhanasar* framework. For this additional reason, Petitioner does not merit a national interest waiver.

III. CONCLUSION

As the Petitioner has not established that he meets the first and second prong of the *Dhanasar* framework, he has not shown that he is eligible for and otherwise merits a national interest waiver. We therefore reserve his arguments relating to Director's additional determination that he also did not satisfy the third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (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). Because the Petitioner has not met the requirements of the *Dhanasar* analytical framework, we find that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.