U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30164596

Date: JUN. 20, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in security consulting, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner qualified for EB-2 classification as a member of the professions with an advanced degree, but that the record did not establish his eligibility for a waiver of the job offer requirement 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 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 USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and

- 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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner previously stated that he plans to work as a correction officer/entrepreneur, and he indicated in his business plan (dated September 2022) that he intends to develop [redacted] an [sic] Security Services firm that provides Resocialization and Rehabilitation [o]f Former Prisoners Consulting Services, Security Surveillance Services, Security Key Performance Indicators Implementation Project, Personal Security – Bodyguard Services [a]nd Aerial Surveillance Services planned to be headquartered in Florida with two business units in Texas and California."

The Petitioner's business plan includes industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company will employ 15 personnel in year one, 26 in year two, 38 in year three, 51 in in year four, and 82 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while his plan offers revenue projections of $576,000 in year one, $1,212,000 in year two, $1,760,000 in year three, $2,220,000 in year four, and $3,940,000 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

The record also includes, but is not limited to, articles about entrepreneurship and the role of immigrants as entrepreneurs, small businesses, and the field of correctional officers and accompanying issues; and information from the U.S. Bureau of Labor Statistics Occupational Outlook Handbook related to correctional officers, bailiffs, and jailers. Lastly, the record includes letters from prior coworkers, education and certification records, employer letters, a resume, immigration records, and an expert opinion letter.

We agree with the Director that the submitted documentation establishes the Petitioner's endeavor has substantial merit. In determining national importance, however, the relevant question is not the overall importance of the industry in which the individual will work or the value of immigrant entrepreneurship; instead, we focus on the "the specific endeavor that the foreign national proposes to

Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor.

The Petitioner offered multiple letters of support and an expert opinion letter discussing his experience working in the Brazilian prison system, as well as his education records and training certificates. The Petitioner's skills, knowledge, and prior work in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director mentioned that the Petitioner's description of his proposed endeavor contains vague and conflicting information about his intentions for obtaining a national interest waiver, and therefore he did not establish the potential prospective impact of the endeavor. The Director noted that where such information is vague, it cannot be meaningfully determined whether the proposed endeavor meets the requirement of national importance. The Director then discussed the Petitioner's claims of economic impact due to job creation and the business being established in HUBZones in Florida, Texas, and California. Additionally, the Director discussed information from the business plan about job creation for U.S. workers in underutilized areas, improving the wages of U.S. workers, and helping local communities bring in investments. The Director stated the business plan does not show any activities beyond the printed examples of buildings in each HUBZone, merely printing out available office space in a qualified HUBZone without more does not show generation of jobs in an underutilized area, and the Petitioner did not show interest in the proposed endeavor from businesses within the HUBZones. The Director then noted several more evidentiary deficiencies, namely that the Petitioner did not show projected staffing levels would provide substantial economic benefits to the United States or the specific geographic areas where consulting would be provided, or that the company would employ a significant population of U.S. workers in those areas. The Director stated that the Petitioner did not demonstrate the proposed endeavor offers substantial positive economic effects and that it has broader implications for the field of security rising to the level of national importance. Furthermore, the Director noted while the record indicates the Petitioner is opening a security service and consulting business, he provided information about correctional officers, jailers, and bailiffs and these occupations are not professional positions due to lack of a minimum U.S. bachelor's degree requirement.

In his appeal brief, the Petitioner did not address several issues raised the Director. Specifically, he did not address the proposed endeavor containing vague and conflicting information, the deficiencies in the business plan related to HUBZones, the lack of information about projected staffing levels providing substantial economic benefits in specified areas or that the company would employ a significant population of U.S. workers in those areas, and why he provided information about correctional officers, jailers, and bailiffs, which are not professional positions due to lack of a minimum U.S. bachelor's degree requirement.

Rather, the Petitioner argues that the Director erroneously imposed a stricter standard of proof. With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than

not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner does not specifically identify statements in the Director's decision applying a higher standard of proof or imposing novel substantive and evidentiary requirements beyond those set forth in the *Dhanasar* framework.

The Petitioner mentions that he has over seven years of experience in the security services field, and with his skills and expertise he will be able to control and resolve conflicts, attract investments, and expand throughout the United States.[2] He also mentions that his work experience will help him successfully manage his business, and his direct knowledge of security services will benefit U.S. companies and individuals that need qualified professionals. The first prong of the *Dhanasar* framework, however, focuses on the proposed endeavor and not on the Petitioner's prior work in the field. The national importance of the Petitioner's proposed endeavor stands separate and apart from his education, skills, and job experience.[3]

The Petitioner points to industry reports and articles in contending that his proposed work is of national importance. He claims that a business development professional is inherently best equipped to prevent the failure of a business, is key to a company's financial stability, and improves, services, products, and business practices. Again, the issue here is not the national importance of the field, industry, or profession in which the individual will work; rather we focus on the "the specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889.

Additionally, the Petitioner cites to information from public policy organizations, news media, and U.S. federal agencies to show the overall value of immigrant entrepreneurship, but he has not demonstrated how operating a security consulting company as contemplated by his specific proposed endeavor rises to a level of national importance. In *Dhanasar*, we 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.

The Petitioner also claims that his proposed endeavor stands to affect the national economy by "offering economic convenience and agility" to "small and medium-sized U.S. companies," "promoting growth and expansion and driving change with innovation," "stimulating the domestic job market," and generating "new jobs for American workers." The Petitioner, however, has not provided evidence demonstrating that his proposed security consulting business would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of his proposed

[2] The Petitioner also references ten years of experience in the occupational and health safety management industry, but this statement appears to be an error.
[3] *See Dhanasar* at 890.

endeavor stands to offer broader implications in his field or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States.

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. While the Petitioner's statements reflect his intention to provide security consulting services to his company's future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises 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. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field, the consulting industry, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown 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. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida, Texas, California, or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his endeavor stands to generate jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers Florida, Texas, California, or the United States a substantial economic benefit through employment levels or business activity.

The Petitioner has not established that he meets the requisite first prong of the *Dhanasar* analytical framework. Therefore, he has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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).

ORDER: The appeal is dismissed.