U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31381531

Date: JUN. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, security management specialist, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts, or business, 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. Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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 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 qualified as an individual of exceptional ability in the sciences, arts, or business,[2] but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not established the national importance of his proposed endeavor and we will dismiss the appeal.

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. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with the Director's conclusion that the Petitioner's proposed endeavor, which aims to provide security services with a focus on combatting drug trafficking, has substantial merit. Yet, the record does not establish that the endeavor rises to the level of national importance as contemplated in *Dhanasar*.

The Petitioner states he plans to start a business in the United States to provide security services in several areas, including the area of combatting drug trafficking. With his initial filing, the Petitioner submitted a statement, a business plan, his resume, educational documents, employment letters, memberships in professional associations, several letters, and articles on the security industry. In response to a request for evidence, the Petitioner submitted several reference letters, a letter of interest regarding the Petitioner's services, an expert opinion, and articles regarding the security industry.

The Director denied the petition, concluding that the Petitioner did not establish eligibility for the requested national interest waiver, as he did not satisfy the *Dhanasar* three-prong framework. With respect to the first prong, the Director determined that the Petitioner's endeavor had substantial merit,

[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).

[2] The Director found that the Petitioner met the EB-2 immigrant classification as an individual of exceptional ability but did not offer any analysis on how this determination was made. Because the Petitioner's appeal is being denied on a separate basis, we decline to reach and hereby reserve the issue of whether the Petitioner meets the EB-2 immigrant classification as an individual of exceptional ability in the sciences, arts, or business. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

but further concluded that he did not establish his endeavor was of national importance as contemplated under the *Dhanasar* framework. Specifically, the Director concluded the evidence did not demonstrate that the Petitioner's endeavor would result in benefits extending to the security industry more broadly, result in substantial employment opportunities or increase societal welfare commensurate with national importance as discussed in *Dhanasar.* The Director further emphasized that the Petitioner submitted reference letters dated after the date the petition was filed, which were not relevant to demonstrating his eligibility for the benefit sought as of the date the petition was filed.

As an initial matter, the Petitioner asserts that the Director erroneously disregarded evidence submitted in response to the request for evidence, specifically reference letters, finding that these letters presented facts which were created after the filing date. The Petitioner indicates that although these letters were dated after the filing date they were based on facts and events which occurred before the filing date. However, the Director's decision indicates they did not consider one letter expressing interest in hiring the Petitioner's company for security advice. It appears, from the decision, that the Director considered all other evidence. Notably, this letter expressed interest in possibly contracting with the Petitioner's company for security services and is more relevant to whether the individual is well-positioned to advance their proposed endeavor and is not relevant to our current discussion of whether the proposed endeavor is of national importance.

The Petitioner asserts that his proposed endeavor is of national importance because it has national and global implications, extending to South America. The Petitioner contends his proposed endeavor would have significant potential to employ U.S. workers and substantial positive economic effects in an economically depressed area; broadly enhance societal welfare by allowing for less drugs to enter the United States; and impact a matter that is the subject of national initiatives- drug use and drug trafficking.

Upon de novo review, we agree that the record does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor would 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

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. To evaluate whether the Petitioner's proposed endeavor will have a broad impact we look to evidence substantiating the "potential prospective impact" of his work. Although the Petitioner states his security services will extend nationally and globally, his business plan indicates he will start his services in Florida and then extend his prospective impact to Georgia, South Carolina, and Texas. The Petitioner's projections for his endeavor to expand are not supported by sufficient explanation and evidence and the plan does not detail how the prospective impact of his endeavor will reach beyond his clientele. Here, we find the record does not show that the Petitioner's proposed endeavor stands

to sufficiently extend beyond his clientele to impact the security industry more broadly at a level commensurate with national importance.

Likewise, the Petitioner indicates that his proposed endeavor rises to the level of national importance because it will greatly improve societal welfare by decreasing the drug trade into the United States. However, although the Petitioner may have some success deterring drug traffickers through his proposed endeavor, he has not discussed in detail and documented how his prospective consulting business would have such broad effects, beyond his clientele, to affect the national welfare.

In addition, the Petitioner has also not demonstrated that the specific endeavor he proposes to undertake would have significant potential to employ U.S. workers or have other substantial positive economic effects on a national level. Although it appears that the Petitioner plans to create employment opportunities in an economically depressed area, he has not shown that his company's future staffing levels, 22 employees, stands to provide substantial economic benefits in this area or in the United States. Similarly, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake will offer other substantial positive economic effects for the country. While the Petitioner claims he will pay over a million in wages and generate over 2 million in revenue, he does not sufficiently support these projections with objective data as necessary to demonstrate that the benefits to the regional or national economy resulting from the undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Accordingly, the evidence submitted on appeal does not overcome the Director's decision that the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. For all 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.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under Dhanasar's second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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.