U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31201223

Date: JUN. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of digital marketing, 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 although the Petitioner established his eligibility for EB-2 classification, he did not demonstrate 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 pursuant to 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.[1]

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."

[1] Appeals filed by representatives must contain a new, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. 8 C.F.R. § 292.4(a). The attorney or accredited representative must sign the Form G-28. A photocopy, scan, or fax of an original signature is acceptable, but a signature created by typewriter, auto-pen, stamp, or similar device is not acceptable. 8 C.F.R. § 103.2(a)(2); 1 *USCIS Policy Manual* B.2(B), https://www.uscis.gov/policymanual. At the time of filing the appeal, the Petitioner provided a copy of a Form G-28 for [redacted] containing a signature created by auto-pen. We sent a notice advising the Petitioner that since the appeal did not contain a properly executed Form G-28, we must treat the appeal as self-represented. The record does not contain a response from the Petitioner to our notice. Because this appeal does not contain a properly executed Form G-28, we consider it to be self-represented.

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,[2] 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.[3]

II. ANALYSIS

According to the Petitioner's resume, he works as a digital marketing manager with the [redacted] Florida, as a parttime freelance marketing consultant in [redacted], Florida, and as the founder and chief marketing officer of [redacted] Brazil. The Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree, and the record supports this conclusion.[4] Therefore, the primary issue on appeal is whether the Petitioner meets the requirements of the three prongs of the *Dhanasar* analytical framework and otherwise merits a national interest waiver as a matter of discretion.

In denying the petition, the Director addressed all three prongs of the *Dhanasar* framework and concluded that the Petitioner did not demonstrate that he meets any of them. On appeal, the Petitioner asserts that he established that a waiver of the job offer requirement would be in the national interest and contends that the Director did not objectively evaluate all the submitted evidence. For the reasons provided 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. [5]

A. Proposed Endeavor

At the time of filing, the Petitioner indicated that he intends to advance his career as an "Entrepreneur in the field of Digital Marketing." Specifically, the Petitioner submitted a Definitive Statement and other documentation indicating that he has recently formed his own digital marketing services consulting firm, [redacted] to "provide[] comprehensive consulting services including market research, branding strategies, website design, digital marketing strategies, search engine optimizations (SEOs), social media strategies, advertising strategies, and content marketing plans."

The Petitioner's initial submission also included a business plan for [redacted] that indicates the proposed endeavor will focus on the retail industry, be headquartered in [redacted] Florida, and open

[2] *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).

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] The record establishes that the Petitioner holds the foreign equivalent of a bachelor's degree from an institution of higher education in the United States, and that he has at least five years of progressive, post-baccalaureate experience in his specialty. *See* 8 C.F.R. § 204.5(k)(3).

[5] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

regional offices in [redacted] Georgia and [redacted] Texas by the end of its fifth year. It includes industry and market analyses, business strategies, financial forecasts and projections, and a description of the company's proposed service offerings and personnel. With respect to future staffing, the business plan projects that the Petitioner's digital marketing business would hire 97 employees in the first five years of operations, pay $3,293,975 in "total tax," and achieve gross revenue of $1,873,856 in its first year and $8,022,308 by its fifth year.

Within his response to the Director's request for evidence issued in November 2022, the Petitioner claimed that his proposed endeavor will have a substantial economic effect on an underserved business economy in [redacted] Florida because his firm's initial location would be in an area the U.S. Small Business Administration (SBA) has designated as a "HUBZone."[6] The Petitioner provided a screenshot dated January 2023 from the SBA showing an SBA HUBZone area in [redacted] Florida.[7]

B. Substantial Merit and National Importance

The first prong of the *Dhanasar* framework focuses on the specific endeavor the individual proposes to undertake and requires the Petitioner to establish both the substantial merit and national importance of the endeavor. 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. The Director concluded that the Petitioner demonstrated that his proposed endeavor has substantial merit but determined he did not meet his burden to establish the national importance of the endeavor.

Specifically, the Director determined that the Petitioner had not shown how his proposed endeavor would have broader implications within his field that would reach beyond clients utilizing his services, or that it would broadly enhance societal welfare. In this regard, the Director observed that the Petitioner's evidence and arguments pertaining to "Digital Marketing and its national importance in the United States" did not demonstrate the potential prospective impact of his proposed endeavor. The Director further observed that the record did not demonstrate that the proposed endeavor has significant potential to employ U.S. workers, would impact an economically depressed area, or would have benefits to the regional or national economy that would reach the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner maintains that the Director did not give due regard to his Definitive Statement; business plan; recommendation letters; industry reports and articles demonstrating the national importance of his proposed endeavor; and evidence of his professional experience and

[6] Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized business zones, with a goal of annually awarding at least 3% of federal contract dollars to HUBZone-certified companies annually. See "HUBZone Program," https://www.sba.gov/federal-contracting/contracting-assistanceprograms/hubzone-program.

[7] The screenshot indicates that the address of [redacted] Florida is in an SBA HUBZone area; we note that the 2023 Florida Limited Liability Company Annual Report for [redacted], filed in January 2023 with the Florida Secretary of State, lists its principal address as [redacted] Florida. *See* https://search.sunbiz.org/Inquiry/CorporationSearch/GetDocument?aggregateId=[redacted]formatType=PDF (accessed June 18, 2024).

accomplishments. He further maintains that his "more than seventeen (17) years" of experience in the digital marketing field, "including running a successful business in Brazil," has brought numerous advantages to the companies for which he has worked throughout his career and that he will continue to do so as an entrepreneur in this sector in the United States. In support of these claims, he references previously submitted media articles and reports regarding the importance of digital marketing to a business organization and the impacts of immigrant entrepreneurs on the U.S. economy.

When determining national importance, however, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *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. On appeal, the Petitioner maintains that his proposed endeavor will have a substantial economic effect on an underserved business economy, noting that his firm's initial location would be in an SBA HUBZone in [redacted] Florida. However, the Petitioner's business plan states only that the business will open in [redacted] Florida; it makes no mention of the HUBZone program or its intent to establish a location within a designated HUBZone or to participate in the program.

In addition, even if the business were to be physically located within an economically depressed area, the direct employment, indirect job creation, and revenue projections included in the Petitioner's business plan are not supported by details showing their basis or an explanation of how those projections will be realized. Further, while the business plan projects the firm's employment of up to 97 workers at three locations within five years, the Petitioner has not established that this addition to the workforce in any of the three locations, including the claimed HUBZone region, would be of sufficient significance to rise to the level of national importance. For all these reasons, the Petitioner has not shown his endeavor has significant potential to employ U.S. workers or that the specific proposed endeavor would offer a region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue.

Further, although the Petitioner broadly states that the staffing and income projections of his proposed endeavor "hold the potential to exert a substantial impact on the broader U.S. economy" and will "resonate at a national level," the record does not provide adequate support for a determination that his specific proposed endeavor will have such a wide-reaching impact. The burden is on the Petitioner to establish that the economic effects of his proposed endeavor are "substantial."

Based on the business plan provided within the initial submission, the Petitioner has not shown how the digital marketing services he intends to provide to U.S. businesses would have broader implications in the digital marketing field or the retail industry that rise to the level of national importance, or that the company's activities would impact the field beyond the company and its clients. While the projected profit and loss table indicates that the Petitioner's company has growth potential, the record does not show that benefits to the U.S. regional or national economy resulting from the

Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*.

Finally, before the Director and in his appellate brief, the Petitioner has placed considerable emphasis on his academic training in advertising and his professional experience in the digital marketing field. The record also contains recommendation letters from employers and colleagues in Brazil and Florida. While important, the Petitioner's expertise acquired through his academic and professional career primarily relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong. A determination regarding the claimed national importance of a specific proposed endeavor cannot be inferred based on the Petitioner's past accomplishments, just as it cannot be inferred based on general claims about the importance of a given field or industry.

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. The Petitioner has not shown how the services he intends to provide would have broader implications in the digital marketing field or the retail industry. Because the Petitioner has not established his proposed endeavor has national importance, he is not eligible for a national interest waiver under the *Dhanasar* analytical framework. We reserve our opinion regarding whether the evidence of record satisfies the second and third *Dhanasar* prongs.[8]

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.

ORDER: The appeal is dismissed.

[8] *See INS v Bagamasbad*, 429 U.S. 24, 25-6 (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).