U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31672334

Date: JUNE 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business and marketing professional, 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but determining 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

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

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Petitioner is a business manager and marketing specialist who proposes to create "a startup that will offer a wide range of marketing and business management consulting services, with a focus on integrating and optimizing the operations of companies in the US, Latin American and Brazilian markets." The Petitioner created [redacted] a limited liability company registered in Florida, which the Petitioner describes as "a marketing and business management consulting company."

The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

A. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined the Petitioner's proposed endeavor has substantial merit. We agree.

The Director concluded, however, that the Petitioner did not establish the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish the potential prospective impact of his company.

On appeal, the Petitioner asserts his firm will have national importance through providing marketing consulting services, specifically, transnational market analysis, development of international marketing strategies, brand management and intercultural communication, and training and workshops in international marketing. The Petitioner also claims his firm will provide business consulting services of national importance through business performance evaluation, consultancy in business and market expansion, training in international business practices, development of partnerships and business networks, consultancy in continuous improvement and productivity, and business proposals and presentations development. The Petitioner claims these services will, among other things, contribute to the global success of U.S. companies by, for example, "preparing them to operate effectively in an increasingly interconnected global environment." The Petitioner asserts his company will be "a vital catalyst in strengthening transnational commercial relations, with potential positive impacts on the U.S. economy."

The Petitioner cites letters from [redacted] Professor [redacted] and the Florida certification of his LLC as evidence of the national importance of his proposed endeavor. This evidence shows the Petitioner has established his company in Florida and earned praise for his past work in the field. The evidence does not, however, establish the national importance of his firm. Mr. [redacted] praises the Petitioner's past work for his company in Florida and credits the Petitioner as "fundamental to the consolidation of the [redacted] brand in the North American market, resulting in solid sales growth and enthusiastic acceptance by the community." Mr. [redacted] states the Petitioner's "company has in us proof of extremely high potential to assist any business owners who wish to expand its business internationally, both in Brazil and in the USA," but does not discuss any broader impact of the Petitioner's company in his field. Mr. [redacted] the President of [redacted] in Florida states he is seeking the Petitioner's assistance in an unspecified business project and asserts the Petitioner's "presence in the U.S. will undoubtedly contribute to the nation's growth by attracting more investors and contributing to the local economy." Mr. [redacted] does not identify any specific investors or other companies or entities that have been or will be serviced by the Petitioner in a manner with broader implications to his field. *Cf. id.* at 892 (stating Dhanasar submitted probative expert letters describing the importance of his specific research as it relates to U.S. strategic interests).

In his analysis of the Petitioner's eligibility for a national interest waiver of the job offer requirement, Professor [redacted] states as "a successful professional in Brazil," the Petitioner "has the capacity to develop strong relationships with small and medium-sized businesses" and "[g]rowth supported by small and medium-sized enterprises pays dividends for all US citizens." Professor [redacted] discusses the growth of the U.S. marketing consultancy industry and the importance of small businesses in the U.S., but he does not specify any relationships with small businesses in the United States that the Petitioner has made and does not detail how the Petitioner's work would impact the broader U.S. marketing consultancy industry. *See id.* at 889 (explaining that when assessing national importance "we look for broader implications").

Professor [redacted] also asserts the Petitioner's "proposed endeavor has significant potential to employ US workers and has other substantial positive economic effects," but he does not state how many U.S. workers the Petitioner's company would employ or specify other economic benefits his company would create. On appeal, the Petitioner also claims his company will address marketing gaps "particularly in underserved regions or those with specific demands" and "providing essential consulting services in these locations can lead to significant economic and business development benefits throughout the United States." The Petitioner does not, however, identify any specific underserved region that his company will serve or otherwise detail how his company will have a significant economic impact. The Petitioner's projected staffing model in his business plan states he will employ just two other individuals in his company. On appeal, the Petitioner confirms his company will have only three employees the first year but anticipates "potential expansion to more than 20 employees" after five years. The Petitioner's business plan does not explain the basis for this expansion. Even with this projected growth, the record does not indicate that the Petitioner's company would employ a substantial number of U.S. workers or otherwise have a significant economic impact as contemplated in *Dhanasar*. *See id.* at 890.

The Petitioner also claims his company will have national importance by "contributing to economic growth and strengthening trade relations between the U.S., Brazil and Latin America." Professor [redacted] states the U.S. designated Brazil as a major ally in 2019 and "discussions have deepened for a bilateral trade package, with a view towards intensifying the economic partnership between their two countries." Professor [redacted] concludes the Petitioner's company will thus impact a matter of national importance. He does not, however, specify how the Petitioner's company will influence trade relations between the U.S. and Brazil beyond individual businesses that he may serve. *See id.* at 889 (explaining "we look for broader implications").

The Petitioner submits articles on the importance of digital platforms in transnational supply chain management, geopolitics and the geometry of global trade, how to build an international marketing strategy, the United States in the World Economy, and the top three global marketing trends of 2022, which he claims support the national importance of his proposed endeavor. The determination of national importance does not focus on the importance of the field in general, but "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* Here, none of the articles mention the Petitioner or his company, or otherwise speak to the potential prospective impact of his proposed endeavor.

The Petitioner further asserts that through his "expertise in marketing and business management consulting, [he is] positioned to significantly support the growth and internationalization of American businesses." The Petitioner claims his company will play "an essential role in promoting the economic well-being and competitiveness of the United States on the global stage." The record indicates, however, that the Petitioner proposes to work with individual companies and the relevant evidence does not demonstrate that the Petitioner's company will have any broader influence on his field. 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, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clientele to impact business management and marketing consulting more broadly at a level commensurate with national importance.

The Petitioner has not established that his proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance.

B. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of his specific proposed endeavor and he does not meet the first prong of the *Dhanasar* framework. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

III. CONCLUSION

The Petitioner has not established the national importance of his proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, he has not demonstrated that he is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.