U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33360658

Date: JUN. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business development specialist, 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. The Director determined that the Petitioner demonstrated his eligibility for EB-2 classification as an advanced degree professional but did not establish that a discretionary waiver of the job offer requirement, and thus of a 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.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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:

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

- 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 classification as a member of the professions holding an advanced degree. The Petitioner provided evidence that he possesses the foreign equivalent of a bachelor's degree in business administration from a Brazilian university and at least five years of progressive post-baccalaureate experience in the field. The record therefore supports the Director's conclusion that the Petitioner holds an "advanced degree" as defined at 8 C.F.R. § 204.5(k)(2). The sole issue to be addressed on appeal is whether the Petitioner established that a waiver of the job offer requirement, and thus a labor certification, would be in the national interest.

In the decision denying the petition, the Director concluded that the Petitioner did not clearly identify what his proposed endeavor entails and did not satisfy any of the three prongs outlined in the *Dhanasar* analytical framework. On appeal, the Petitioner asserts that the Director's decision contains erroneous conclusions of law and fact and does not reflect consideration of all submitted evidence. He maintains that he meets all three prongs set forth in *Dhanasar* and otherwise established that a discretionary waiver of the job offer requirement would be in the national interest.

For the reasons provided below, we agree with the Director's determination that the Petitioner did not establish that the national importance of his proposed endeavor and is therefore ineligible for the requested discretionary waiver of the job offer requirement in the national interest. While we will not address every piece of evidence individually, we have reviewed and considered each one.

A. The Proposed Endeavor

As noted, the Petitioner has a bachelor's degree in the field of business administration, awarded in 2011. The record reflects that he also completed two post-graduate MBA certification programs in Brazil. According to the Petitioner's resume, he worked for a Brazilian clothing business in the positions of commercial representative, sales supervisor, and sales manager between 2011 and 2020, and subsequently worked as an independent business consultant in Brazil, with clients in various retail sectors between 2020 and 2022. At the time of filing in October 2023, the Petitioner indicated that he had recently commenced employment as the general manager of a Florida-based natural stone company.

In a professional plan submitted at the time of filing, the Petitioner provided the following description of his proposed endeavor, which he indicated would be based in Florida:

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

> I intend to perform as a Business Development Specialist and provide my specialized services in sales, marketing, logistics and project management to impact the field of natural stones, textiles, and clothing in the U.S. Due to my extensive professional experience in [these industries], I intend to focus my contributions in these sectors first, while planning to serve other industries in the futures as well . . .[.]

The Petitioner stated that his services would include facilitating the import and export of natural stone products between Brazilian and American companies; market research and analysis; business strategy development and implementation; client relationship management and networking; merger and acquisition advisory services; and project management and coordination. He indicated his intent to "hire qualified and talented U.S. workers" to assist in providing services to various clients, which implied his intent to open his own business in the business consulting field.[2]

In response to the Director's request for evidence (RFE), the Petitioner stated he would offer services "within American companies in the natural stone and civil construction industries":

> I intend to perform as a Business Development Specialist . . . with a primary focus on shaping marketing, sales, and logistics activities for U.S.-based companies to enhance the scalability within the dynamic civil construction and natural stone markets, ultimately leveraging affordable housing efforts in the United States.
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> A central component of my initiative involves fostering strategic partnerships with Brazilian natural stone companies and key players in logistics . . .. I am to leverage these strategic partnerships for U.S.-based companies I work with, not envisioning to establish a self-owned business in the country. Through these collaborations, I am set to facilitate the import and export of natural stones, including granite, marble, quartzite, limestone, and others for construction materials in the United States.

The Director observed that the Petitioner's professional plans did not provide sufficient insight into his intended activities. The initial plan indicated he would be hiring workers to assist him with providing services to companies in several industries and therefore suggested he would likely be operating his own consulting business. The updated plan indicated that the Petitioner intends to focus solely on the natural stone and civil construction industry, did not mention any plans to hire workers or start a business, and did not clarify whether he intended to work for a U.S. employer in the natural stone industry or work as an individual consultant for companies in this field. On appeal, the Petitioner does not address the Director's observations or clarify in which capacity he intends to work in the United States.

B. Substantial Merit and National Importance

The first prong of the *Dhanasar* framework, substantial merit, and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be

[2] As noted by the Director, the initial professional plan also including several references to the Petitioner's proposed endeavor to work as an "IT Specialist." The Petitioner, in response to the Director's request for evidence, indicated that any references to this unrelated proposed endeavor were typographical errors.

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 evidence in the record cites market and industry data describing the importance of trade relations between the United States and Brazil, the growth of the natural stone market, the rising costs of construction materials and the impact of these costs on the availability of affordable housing. We find the evidence sufficient to establish the substantial merit of the Petitioner's proposed endeavor to provide business development services in this sector. However, simply working in an area with substantial merit is insufficient to meet *Dhanasar's* first prong. Our focus in considering national importance is not on the industry itself; instead, we focus on "the specific endeavor that the foreign national proposed to undertake" and its "potential prospective impact." *Id.*

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, such as those resulting from certain improved manufacturing processes or medical advances." *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. Finally, we will consider evidence that a proposed endeavor has the potential to broadly enhance societal welfare or cultural or artistic enrichment, and evidence it would impact a matter that a government entity has described as having national importance or is the subject of national initiatives.

Here, the record does not contain information or evidence regarding any projected direct economic impacts or job creation attributable to the Petitioner's future work within the context of his specific proposed endeavor. While the Petitioner submitted a professional plan outlining the types of services he may provide to U.S. businesses, he did not provide a business plan or any other plans or projections explaining the expected scope of his intended activities, nor did he otherwise support his general claim that his proposed endeavor would have potential positive economic effects at a level commensurate with national importance.

After indicating in his initial professional plan that he intends to hire and train U.S. workers to assist him with the provision of business development services, he indicated in response to the RFE that he would not be starting his own business and did not mention any hiring plans. Therefore, he has sufficiently explained how his proposed endeavor to work as a business development specialist has the significant potential to employ U.S. workers. We have also considered whether the Petitioner demonstrated that his proposed endeavor would have other substantial positive economic effects particularly in an economically distressed area. Both submitted professional plans indicate "the proposed endeavor will be performed primarily in Florida" but state that through travel, the Petitioner "will have the opportunity to engage with and benefit economically distressed areas across different states and regions, contributing to their overall development and growth." The record offers no additional details or support for the Petitioner's claim that his proposed endeavor would have significant potential to employ U.S. workers or other substantial positive economic effects in an economically depressed area.

The Petitioner through his own statements and through counsel, focuses primarily on the indirect economic benefits of his proposed endeavor, noting it will "serve as a catalyst for enhancing the efficiency and competitiveness of local companies in the natural stone and construction sectors" and "create a ripple effect of growth, job creation, and economic improvement on a national scale." The Petitioner further maintains that "the cycle of economic growth initiated by the success of this proposal extends beyond the natural stone and construction sectors, influencing related industries and local economies." However, he does not offer evidence to support these general assertions or otherwise support his claim that his provision of business development services to Florida-based companies in the natural stone industry will have such far-reaching effects. While we do not doubt that the services the Petitioner intends to provide could stimulate local economic activity at some level, it is his burden to show that the economic effects of the proposed endeavor will be "substantial" and at a level commensurate with national importance. Here, despite the Petitioner's claim that his endeavor will act as a "pivotal force for economic growth" on a regional or national basis, the record does not contain sufficient relevant or probative evidence showing that the direct or indirect economic benefits of his proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. 26 I&N Dec. at 890.

On appeal, the Petitioner maintains that the Director overlooked evidence that his proposed endeavor has national or even global implications within his field. Specifically, he emphasizes his endeavor's "potential to influence specific industries and its far-reaching impact on fundamental aspects of the business field." The Petitioner indicates that his endeavor will introduce "cutting edge tools and methodologies such as market segmentation, SWOT analysis, and SMART goals," will "innovate the field of natural stones," will act as "a model for effective business development within the U.S.," and will potentially establish "a global best practice that can be emulated in similar industries worldwide." The Petitioner also emphasizes that his proposed endeavor positions him as "a significant driver for positive change with far-reaching consequences." Finally, the Petitioner claims that, based on his education and experience, he is positioned to "pioneer new techniques with far reaching implications," and to "transform" multiple industries in the United States.

However, these broad claims regarding the innovations the Petitioner will offer and the potential influence he will wield across multiple industries are not supported by sufficient evidence. The record does not document the Petitioner's claimed introduction of innovations in his field or support his assertion that his proposed business development work with Florida-based natural stone companies would provide him with the platform to influence or transform business development practices in the industry at large or influence "global best practice in similar industries worldwide."

The record reflects that the Petitioner possesses considerable practical experience in business strategy development, sales, market research and related marketing tools and methodologies, and that he had approximately two months of experience in the natural stone industry at the time of filing. However, it does not establish how his proposed endeavor would contribute advancements, improvements or other influence within the business development field or the industry in which he intends to work, or otherwise support his claims that his proposed activities would have broader implications within these fields consistent with *Dhanasar*. 26 I&N Dec. at 889. The Petitioner indicates no plans to disseminate his methodologies or business development strategies and it is therefore unclear how his activities as a business development specialist would innovate the field or influence national business models or global best practices, as claimed.

Further, while the Petitioner provided letters from two Florida-based importers of natural stones and a Brazilian natural stone exporter indicating an interest in working with him, it is unclear how the implications of his work would extend beyond the operations of his potential clients or partners to have national or even global implications in the field. A reference letter from the CEO of a Florida-based natural stone importer and distributor praises the Petitioner's skills in the business development field but offers insufficient explanation for the author's assertion that the Petitioner is a "visionary" who is poised to develop and introduce improvements to the North American natural stone market. In fact, other statements in the record indicate that the United States is already a major importer of Brazilian natural stone, and it is unclear how the Petitioner's proposed endeavor would "transform" this industry.

In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not extend beyond his students to impact his field more broadly. *Dhanasar*, 26 I&N Dec. at 893. Similarly, the evidence submitted here does not sufficiently support the Petitioner's claim that his proposed endeavor to collaborate with U.S. companies in the natural stone industry would offer tangible improvements, advancements, or other broad impacts in his field or have implications that reach beyond his specific clients, employers, or partners in the industry.

We have also considered the Petitioner's claim that his proposed endeavor would impact areas that are the subject of national government initiatives. Specifically, he asserts that his endeavor "aligns with the recognized priorities" of U.S. government entities, such as the U.S. Department of Commerce, which emphasizes the importance of the international trade sector as a contributor to the nation's economic resilience and sustained development, and the Department of Housing and Urban Development, which "focuses on affordable housing as a matter of national importance." However, the fact that an individual will work in a field that is generally adjacent to the subject of national initiatives is not sufficient to demonstrate the national importance of their work. The Petitioner must still demonstrate the potential prospective impact of his proposed endeavor and how it impacts those national initiatives. Here, the Petitioner did not provide evidence that his work with U.S. natural stone companies will be carried out on a scale that would have a substantial prospective impact on international trade relations with Brazil, the availability of affordable housing in the United States, or on any specific national initiatives aimed at these areas.

The record also contains statistics citing an increasing demand for qualified business management professionals in the United States and a shortage of qualified individuals to meet this demand. However, this shortage is likewise insufficient to demonstrate the national importance of the Petitioner's proposed endeavor. A shortage of qualified professionals alone does not render the work of an individual business development specialist nationally important under the *Dhanasar* precedent decision. Further, the Petitioner has not shown how his employment as a business development specialist would have a significant impact on addressing the talent shortage in the field.

We note that the Petitioner attributes the likely success and potentially broad national implications of his proposed endeavor, in part, to his educational background and experience in the business development field. He also submitted recommendation letters from former colleagues and clients who are familiar with his prior work and professional accomplishments. The Petitioner's skills, knowledge, and prior work in his field, however, relate primarily to the second prong of the *Dhanasar* framework,

which "shifts the focus from the proposed endeavor to the foreign national." 26 I&N Dec. at 890. The issue here is whether the specific endeavor that he proposes to undertake in the United States has national importance under *Dhanasar's* first prong. The submitted recommendation letters, which praise the Petitioner's professional skills and qualifications, do not offer insight into the national importance of his proposed endeavor to work as a business development specialist in the United States.

Finally, we acknowledge that the Petitioner submitted an expert opinion letter from a business professor at [redacted] who evaluated his eligibility under the three prongs of the *Dhanasar* framework. In addressing *Dhanasar*'s first prong, the author significantly focuses on the business development specialist occupation, the economic impact of the management consulting industry, the importance of small businesses to the U.S. economy, economic relations between the Brazil and the United States, as well as the Petitioner's prior experience and qualifications to work in the general field of business development. While the professor indicates that the United States would benefit from the Petitioner's expertise and skills as business development specialist, he does not sufficiently address the Petitioner's specific proposed endeavor to work in the natural stone industry, its prospective substantial economic impact, or any broader implications of the Petitioner's work in the field of his proposed endeavor.

We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

For the reasons provided above, the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of *Dhanasar*. Accordingly, the record does not establish that he merits, as a matter of discretion, the requested national interest waiver.

C. Reserved Issues

Our decision regarding the proposed endeavor's national importance resolves this appeal. Accordingly, we need not reach, and thus reserve, the Petitioner's appellate arguments that he is well positioned to advance his proposed endeavor and that, overall, granting the waiver would benefit the United States, as required by *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).

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. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.