U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30173233

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. *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.

The Director of the Texas Service Center denied the petition. The Director determined that the Petitioner qualifies 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 and the record supports the Director's conclusion.[2] Accordingly, 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.

The Director found the Petitioner demonstrated the substantial merit of his proposed endeavor under the first prong of the *Dhanasar* framework but concluded he did not establish the proposed endeavor's national importance, that he is well-positioned to advance the proposed endeavor, and that, on balance, it would benefit the United States to waive the job offer requirement.

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 the national importance of his proposed endeavor and is therefore ineligible for the requested national interest waiver. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

A. The Proposed Endeavor

The Petitioner has a bachelor's degree in administration and completed two post-graduate MBA certificate programs. The record indicates that he worked for a Brazilian clothing business as a commercial representative, sales supervisor, and sales manager between 2011 and 2020. From 2020 until 2022, the Petitioner worked as an independent business consultant in Brazil, serving clients in various retail sectors.

In a professional plan submitted at the time of filing, the Petitioner described his proposed endeavor as follows:

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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).

[2] The Petitioner demonstrated that he completed the foreign equivalent of a bachelor's degree at a Brazilian university and that he has at least five years of progressive work experience in a field related to his degree. *See* 8 C.F.R. § 204.5(k)(2) (defining "advanced degree").

> Considering my unique set of skills as a Business Development Specialist, my proposed endeavor is to offer my extensive experience in commercial and administrative areas, sales processes, and operational management. I will deploy my impressive professional experience in areas of multi-brand retail, franchise network, outlets, wholesale, and own stores, promote efficiency, increase profitability and revenue, and enable business growth for American companies.

In response to a request for evidence (RFE), the Petitioner provided an updated professional plan in which he indicates his intent to "perform as a Business Development Specialist and provide my specialized services in Strategic Business Management, Sales Strategical Planning, People Development and Customer Service to impact the sales field through innovation in the U.S." The response to the RFE also clarified the Petitioner's intent to initially focus on the textile, food and beverage, and automotive industries, based on his previous experience working with employers or consulting with clients in these areas.

The two plans are similar in content and include lengthy descriptions of specific services the Petitioner intends to offer to U.S. companies in several areas related to business development. While the Petitioner does not directly state whether he intends to work as an independent consultant or to operate his own consulting company, both professional plans generally reflect his intent to work with multiple companies in a consulting capacity as a business development specialist.

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 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 small and medium-sized enterprises and retail businesses as key drivers of job creation and revenue in the U.S. economy. We find the evidence sufficient to establish the substantial merit of the Petitioner's proposed endeavor to provide business development services to companies in these sectors. However, simply working in an area with substantial merit is insufficient to meet the national importance element of *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, and evidence it would impact a matter that a government entity has described as having national importance or is the subject of national initiatives.

The Petitioner, through his own statements and through counsel, has made general claims regarding the substantial positive economic effects of his proposed endeavor, many of which simply emphasize the economic results businesses may achieve by implementing successful business development strategies. For example, the Petitioner stated in response to the RFE that "Business Development Specialists have the ability to provide indispensable services to American businesses and therefore stimulate U.S. economic growth and activity." He asserted that his provision of the services outlined in his professional plan "will cause a positive and potential impact on the U.S. economy by providing better Business and management of finances, control of risks, and great financial health for the U.S. businesses and investors, which will affect the entire economy and . . . [create] new job opportunities for U.S. workers." While the revenue and employment generated directly and indirectly by the business consulting industry as a whole may be important to the U.S. economy, the Petitioner must still demonstrate that the economic effects of his specific proposed endeavor will be "substantial."

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. Therefore, he has not sufficiently explained how his proposed endeavor to work as a business development specialist has the significant potential to employ U.S. workers, nor has he stated that he will operate the proposed endeavor in an economically depressed area. 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 other projections explaining the expected scope of his intended consulting activities or otherwise support his general claim that his proposed endeavor would have potential positive economic effects at a level commensurate with national importance.

The Petitioner instead maintained that his proposed endeavor would have widespread "ripple effects," noting that his work will "not only benefit the companies he will work with in the United States but also . . . have a wide-ranging impact on American businesses" that would extend to "every other field in the U.S.," and "ultimately positively impact the entire nation's economy." He further indicated that he "will potentially generate economic growth and contribute toward the advance and optimization of the U.S. market, "increase America's prosperity," and fuel "exponential economic expansion and the emergence of new employment opportunities for American workers." However, he does not offer a sufficient evidentiary basis for these broad statements or otherwise support his assertions that his provision of consulting services as a business development specialist would potentially have such far-reaching impacts.

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 any claimed economic effects of the proposed endeavor will be "substantial" and at a level commensurate with national importance. Here, 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.

We have also considered the Petitioner's claim that his proposed endeavor would impact an area that is the subject of national government initiatives. He specifically references the Biden Administration's

commitment to helping small businesses through the 2021 American Rescue Plan and other initiatives, noting that such government actions have enabled many small businesses recover from the COVID-19 pandemic. The Petitioner asserts that his proposed business development activities will "honor the Biden-Harris Administration's commitment to helping America's new small businesses grow, create jobs and provide the essential goods and services our communities depend on." 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 record does not demonstrate that the Petitioner's consulting work would be carried out on a scale that would have a substantial prospective impact on the growth of the small business sector or national initiatives aimed at that sector.

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 or consultant 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.

The Petitioner attributes the likely success and potentially broad national implications of his proposed endeavor, in part, to his educational background and considerable 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 additional insight into the national importance of his proposed endeavor.

Nevertheless, the Petitioner maintains on appeal that the Director improperly overlooked the submitted reference letters in evaluating the first prong of the *Dhanasar* framework, emphasizing that the best way to estimate the prospective impact of his work is by evaluating his past achievements and the significant impact of his previous contributions. As noted above, we have reviewed the reference letters, but the authors do not state, for example, that the Petitioner's past work had broad implications within his field that would be carried over to the proposed endeavor and would substantially benefit or advance the field. As contemplated by *Dhanasar*: "[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.* Here, the Petitioner claims a "unique capacity" and understanding of business and states he has developed innovative tools and strategies in business administration that will influence "thousands of American entrepreneurs" and enable him to act as an "agent of transformation." However, the record does not document the Petitioner's claimed innovations in his field or support his claim that his proposed endeavor to work as a business development specialist would provide him with the platform needed to influence thousands of U.S. businesses or to transform his industry.

The Petitioner also indicates in his professional plan that he intends to provide "practical guidance through training, lectures, mentoring and consulting to entrepreneurs and community members regarding commercial, marketing and sales topics to help the growth of small and medium businesses and the qualification of the U.S. workforce." 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. Here, the Petitioner did not sufficiently elaborate on the knowledge-sharing component of his proposed endeavor or provide an evidentiary basis to support a claim that any training services he provides to small business owners would result in tangible improvements, advancements, or other broader implications for his field. While the evidence indicates that the Petitioner has knowledge of and practical experience with a variety of business development-related areas, it does not establish that his proposed training or mentoring activities would potentially have broader impacts within the business development field or on the "qualification of the U.S. workforce" as claimed.

Finally, we acknowledge that the Petitioner submitted an expert opinion letter from a [redacted] business professor 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 industry. While the professor indicates that the United States would benefit from the Petitioner's expertise and skills as a business development specialist, he does not sufficiently address the Petitioner's specific proposed endeavor, its prospective substantial economic impact, or any broader implications of the Petitioner's work in the field.

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.