U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31474233

Date: JUN. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks classification as a member of the professions holding an advanced degree. 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. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish either the Petitioner's eligibility for the EB-2 classification or that a waiver of the classification's job offer requirement is 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

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a 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 found that the Petitioner did not establish that he is a member of the professions holding an advanced degree, and as such did not establish that he qualifies for the EB-2 classification. The Director further found that the Petitioner did not demonstrate eligibility under any of the three required prongs of the *Dhanasar* analytical framework, and therefore did not establish that a waiver of the job offer requirement was in the national interest. The Petitioner listed Chief Executive Officer as the job title under Part 6 on the petition. He proposes to run his company, [redacted], in [redacted] Florida. In the Petitioner's business plan, the Petitioner stated his, "effort will contribute to the development and growth of U.S. small, medium and large-sized businesses, as his company will offer specialized logistics services in the road transport area" and his goal is "to support American companies in the management and planning of their logistic activities." Because, for the reasons discussed below, we agree with the Director that the Petitioner has not established the first prong of the *Dhanasar* framework, we reserve our opinion on the question of the Petitioner's eligibility for the EB-2 classification.[2] *See INS v. Bagamasbad*, 429 U.S. 25, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

Regarding the Petitioner's request for a national interest waiver, in analyzing the first *Dhanasar* prong the Director concluded that the proposed endeavor has substantial merit but not national importance. Specifically, the Director concluded that the Petitioner did not demonstrate that his specific endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Director observed that in response to the request for evidence, the Petitioner submitted a revised business plan in which he attempted to make material changes to the petition from the initial proposition of creating 22 jobs by year 5 to creating 15 jobs by year 5 in addition to the name change from [redacted] to [redacted] The Director determined that the business plan held limited evidentiary value as it related to the material change to the petition because a petitioner must establish eligibility at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). The Director addressed the opinion letter from [redacted] noting that it lacked relevance because it discussed the importance of the Petitioner's industry and past employment rather than addressing how the specific proposed endeavor would affect prospective substantial economic impact in the larger field of supply chain

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] To qualify as a noncitizen of exceptional ability under section 203(b)(2)(A) of the Act, the noncitizen must meet at least three of the six criteria outlined in 8 C.F.R. 204.5(k)(3)(ii) or may submit comparable evidence to establish their ability under 8 C.F.R. 204.5(k)(3)(iii). The Director found that the Petitioner did not establish that at least three of the six criteria, nor did he declare and demonstrate why the standards did not readily apply to his occupation based on the comparable evidence he submitted.

management and logistics and overall satisfy the national importance element. The Director reviewed the many articles submitted about the importance of supply chain management and logistics in the U.S. economy but noted the Petitioner did not address how a small business such as the one he proposed could impact the supply chain of the U.S. on a national level. The Director also concluded that the Petitioner had not shown that benefits to the regional or national economy resulting from his proposed endeavor would reach the level of "substantial economic effects" contemplated by *Dhanasar*.

On appeal, the Petitioner contends that the Director abused their discretion in determining that the record does not establish the endeavor's national importance and did not sufficiently evaluate or address the evidence submitted. The Petitioner notes that there is a STEM talent gap which is a significant concern in the United States and that he is a foreign expert who intends to bring his expertise and entrepreneurial venture to the United States thus directly contributing to the expansion of the qualified workforce in STEM fields. The Petitioner further asserts that the Director only focused on the substantial potential to employ U.S. workers or other substantial economic effects even though the Petitioner "touched on all the aspects that should be considered by USCIS when evaluating the proposed endeavor's national importance." He argues that the Director should evaluate whether the proposed endeavor would further activities recognized as having national importance by a government agency or institution as outlined in the USCIS Policy Manual. *See generally*, 6 *USCIS Policy Manual* F.5(D)(2), https//uscis.gov/policymanual. Accordingly, the Petitioner asserts that his proposed endeavor substantially develops and promotes some technologies, industries, and fields officially recognized as important to the nation's competitiveness and technological leadership. The Petitioner argues that his expertise and endeavor fall within the Department of Homeland Security's STEM Designated Degree Program List under the Transportation and Materials Moving and Hazardous Materials Management and Waste Technology/Technician thus demonstrating the national importance of the proposed endeavor. The Petitioner refers to two of our non-precedent decisions concerning STEM related endeavors. However, these decisions were not published as a precedent and therefore do not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c).

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

On appeal, and in support of the Petitioner's claims regarding the growing demand for logistics and transportation, the Petitioner submits several articles discussing Vagas.com for salaries and job responsibilities in Brazil; Glassdoor's assessment of chief executive officers; articles on the global reach of Nestle and Pfizer, and various articles on the overall importance of STEM innovators and the Biden-Harris Administration's support for STEM talent. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "petitioner was put on notice of the required evidence and given a

reasonable opportunity to provide it for the record before the denial"). There is no question that supply chain management and logistics are important, however, there is not sufficient documentary evidence in the record to demonstrate that the Petitioner's proposed endeavor has the potential to impact these fields at a level commensurate with national importance. In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* at 889. These articles submitted on appeal do not discuss the Petitioner's proposed endeavor, its potential impact, or otherwise demonstrate that the endeavor stands to have an impact on supply chain management and logistics industries that would rise to the level of national importance.

We conclude, upon de novo review, that the Petitioner's business plan, and the other information in the record regarding his proposed company, do not establish the national importance of the proposed endeavor. The business plan states that the Petitioner will personally invest $50,000 for the pre-opening costs, but at the Director noted, the Petitioner did not submit evidence to establish that he has a means for funding, interested U.S.-based customers or investors, or other feasible plans for financial support in the United States. As such, we cannot assess whether the business plan's stated job creation estimates of 15 jobs by year 5 are credible. Moreover, even if were we to assume that the estimates are credible, the record does not contain sufficient documentary evidence to establish that the jobs created, would result in "substantial positive economic effects" commensurate with national importance as contemplated by *Matter of Dhanasar*. *Id.* at 890. Any business or economic activity has the potential to positively impact the economy and the industry in which it operates; however, the Petitioner has not offered a sufficiently direct connection between his company's activities and any demonstrable economic effect. The record does not contain an evidentiary basis either to support the stated economic projections or to conclude that the economic effects of the proposed endeavor have the potential to rise to a level of national importance.

On appeal, the Petitioner's brief explains that the Petitioner's proposed endeavor is to ". . . establish a company that will provide supply chain management and logistics consultancy services to enterprises located in the United States, mainly the ones in need of optimizing their overall supply chain and business performance, assisting them in effectively managing the movement and storage of materials and goods, and ensuring an optimized flow from the point of origin to the point of consumption, touches several other factors that must be addressed by USCIS when determining national importance, such as: has national or global implications within a particular field; broadly enhance societal welfare; and impacts a matter that a government entity has described as having national importance or is the subject of national initiatives." However, we conclude that the record does not contain sufficient objective, documentary evidence to establish the endeavor's potential prospective impact on logistics or supply chain management. Although the Petitioner proffers that he aims to improve ". . . the nation's Logistics and Supply Chain sector and industries through innovative solutions addressing integrated planning and execution of processes required to optimize the flow of materials, information and capital," the record does not contain sufficient documentary evidence to demonstrate that the company stands to do so at a level that rises to national importance.

Although the record reflects the Petitioner's intention to establish his company, and provide valuable services to his clients, the Petitioner has not offered sufficient information or evidence to demonstrate that the prospective impact of the proposed endeavor rises to the level of national importance. 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. *Matter of Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently impact the U.S. economy at a level commensurate with national importance.

Upon de novo review, we conclude that the Petitioner has not demonstrated the national importance of the proposed endeavor. Because the documentation in the record does not establish national importance as required by the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding whether the record satisfies the Petitioner's qualification for the EB-2 classification or the remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25 (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant is otherwise ineligible).

III. CONCLUSION

Because the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework related to national importance, we conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.