U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30626552

Date: JUNE 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing and communications 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, concluding that the record did not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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 an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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

Id.

II. ANALYSIS

A. EB-2 Classification

The Petitioner is a marketing and communications specialist. He submitted a diploma and transcripts for his 2011 degree in marketing from the [redacted], in Ecuador; along with an academic evaluation that states his degree is equivalent to a U.S. bachelor's degree in marketing. In addition, the Petitioner submitted an employment letter that establishes five years of progressive experience in the specialty. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree and we agree.

B. National Interest Waiver

1. Substantial Merit

The first prong, 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. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner states his proposed endeavor is to open his own marketing consultancy company, "[t]o support U.S. businesses in enhancing their brand image and expanding their digital presence. By doing so, I aim to strengthen their market positioning, increase brand equity, boost sales, and drive revenue growth, ultimately contributing to the reinforcement of the U.S. economy." The record contains industry articles and reports on the importance of small businesses, the economic impact of advertising and marketing, and government initiatives related to the Petitioner's industry. We conclude that the proposed endeavor has substantial merit.

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Petitioner asserts that the Director's decision, "[c]ontains instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion." Upon de novo review, we conclude that the Director properly analyzed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence and the Petitioner did

[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).

not demonstrate that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Petitioner emphasizes on appeal, "[t]he provided articles indeed demonstrate an interest from the United States in harnessing the Petitioner's knowledge and expertise towards the economic growth of U.S. businesses." In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on, "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* 26 I&N Dec. at 889. The industry reports and articles in the record show the U.S. government's interest in industries related to the proposed endeavor and while we recognize the value and importance of the industry, working in the industry is insufficient to establish the national importance of the proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of his proposed endeavor. For example, the Petitioner submitted a Fact Sheet entitled, "Biden-Harris Administration Expands Access to Capital and Support for Small Businesses." While this shows government efforts to support small businesses, it does not establish the national importance of the Petitioner's proposed endeavor. Although the industry reports and articles provide good background information and the U.S. government's interest in the industry, without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

Further, the Petitioner's personal statement regarding the national importance of his proposed endeavor also focuses on the impact of the industry and not his specific proposed endeavor's prospective impact. He asserts that, "[m]arketing is a key driver for U.S. economic growth," "[m]arketing is an important generator of employment in the United States," "[m]arketing plays a key role in promoting tourism in the United States," and, "[t]he impact of marketing on small and medium businesses is significant." He then lists various government initiatives related to the industry of his endeavor; however, he does not specifically discuss his specific proposed endeavor and its broader impact. The Petitioner states his proposed endeavor, "[w]ill serve to benefit defined U.S. goals and promote national initiatives at the local and regional levels. The prospective advancement of my proposed professional endeavors will favor and contribute to the country's economic prosperity, DP, and the quality of life of U.S. citizens." However, this does not detail precisely how his proposed endeavor will contribute to economic prosperity or quality of life. As above, his personal statement emphasizes the national importance of the industry in which the Petitioner seeks to work but does not further support the national importance of his proposed endeavor.

Dhanasar states, a proposed endeavor could rise to the level of national importance with, "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." *Id* at 890. In addition, a proposed endeavor, "may have national importance because it has national or even global implications within a particular field, such as certain improved manufacturing processes or medical advances." *Id.* at 889. The Petitioner contends that his proposed endeavor will, "drive revenue growth, strengthen marketing positioning, boost sales and further the digital presence of U.S. businesses to have a clear impact on the nation's economy." He states that his focus will be on small to medium sized businesses in the state of Florida, with some businesses being in the tourism industry. However, the record does not establish that his proposed

endeavor will impact the industry more broadly or have substantial positive economic effects, particularly in an economically depressed area to impact more than his prospective clients.

The record contains articles on the impact the marketing industry can have on small businesses and the economy; however, it does not establish the broad implications of the specific proposed endeavor outside of his prospective clients. 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. *Dhanasar* 26 I&N Dec. at 893. The Director concluded that the evidence, "remains insufficient to show that the petitioner's specific proposed endeavor will have broader implications within its field or will result in benefits beyond that of his self-owned consultancy company and its immediate clients, rising to a level of substantial positive economic effects, or the broad enhancement of societal welfare." The Petitioner states in his proposed endeavor statement that he will promote innovation and circulate "these new ideas," but does not specify the new ideas and how they impact the field more broadly. Therefore, we agree that the record does not establish the scale of his work would rise to the level of national importance or that there are any advances or improvements in the field attributable to the Petitioner. As the record does not establish the broader impact of the Petitioner's specific endeavor, we conclude that the record does not establish the proposed endeavor will have broader implications beyond his prospective clients.

The Petitioner addresses the proposed endeavor's lack of potential to employ U.S. workers by stating that it is, "[j]ust an example of a factor that may be considered. It is not inherently necessary to meet each of the possible evidentiary examples provided in the precedent decision in order to prove that a proposed endeavor is of national importance." While this may be true, the Petitioner must establish that the proposed endeavor is of national importance by a preponderance of the evidence which the record has not otherwise established as discussed above. *Matter of Chawathe*, 25 I&N Dec. at 375-76

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (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 did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence 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.