U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31415522

Date: June 25, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a physical fitness instructor, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, as well as a national interest waiver of the job offer requirement attached to this classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish eligibility for a national interest waiver under the framework outlined in Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). 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.

On appeal, the Petitioner asserts that the Director erred in finding that the Petitioner's proposed endeavor is not of national importance, that he is not well positioned to advance his proposed endeavor, and by not considering the opinion from the industry expert contained in the record. In support, the Petitioner submits a brief, reasserting his eligibility and citing to the evidence and arguments contained in his initial filing.

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.

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:

- 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. at 889.

II. ANALYSIS

A. EB-2 Classification

The Director did not address the Petitioner's eligibility for the EB-2 classification; however, because we are dismissing this appeal on the dispositive issue explained below, we reserve our review of the Petitioner's eligibility for EB-2 classification. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting 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).

B. 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 and its "potential prospective impact." Id. at 889. 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. Id. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual. As such, we will first identify the Petitioner's endeavor as shown in the record. Then, we will evaluate the Petitioner's evidence in support of the endeavor's substantial merit and national importance.

The Petitioner asserts that his proposed endeavor is to work in the United States as a fitness director. He contends than an expert fitness director can have a positive impact on the United States "by designing programs that promote healthy behaviors and lifestyle habits, reducing healthcare costs, and supporting economic growth." Additionally, he contends that obesity in the United States is a significant public health issue, a major risk factor for many chronic diseases, and a significant

[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).

contributor to healthcare costs in the United States, and expert fitness directors like himself play a vital role in developing wellness programs that prevent obesity.

Upon de novo review, we acknowledge that the Petitioner's proposed endeavor's merit may be demonstrated in a range of areas and it has positive objectives. However, as discussed below, the Petitioner has not established that his proposed endeavor is of national importance.

On appeal, the Petitioner contends that the evidence he submitted, including "citations to objective, reliable research in support of the national importance of" his work as well as two expert opinions which conclude that his proposed endeavor has substantial merit and national importance and establish that his proposed endeavor is of national importance. He contends that preventing chronic diseases and promoting mental health through the promotion of physical fitness is nationally important, and fitness directors like himself are "essential to improve the global advantage of America, and additionally, contributing for the economic development of the country and health industry."

Here, the Petitioner relies primarily on the societal interest in combating obesity, reducing the risk of chronic diseases associated with obesity, and improving overall health. However, this misapplies the Dhanasar framework. While we acknowledge that it may be reasonable to conclude that fitness directors can develop wellness programs that may prevent obesity and promote healthy lifestyle habits, we agree with the Director in concluding that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employer and its operations to impact the field of physical fitness or the U.S. physical fitness and health industry more broadly at a level commensurate with national importance – and given the commonality of the position, a single fitness director does not usually have national importance. Likewise, the record does not support the Petitioner's assertion that his endeavor will "improve the global advantage of America" and contribute to the "economic development of the country and health industry," instead, the record indicates that the Petitioner's endeavor will only benefit his clients and would not have broader implications in the field. The evidence on record also does not support that the services provided by the Petitioner will directly result in broader implications or meaningfully address obesity rates on a scale commensurate with national importance. Further, while the Petitioner has provided numerous articles discussing the importance of physical fitness and disease prevention, these articles do not discuss the Petitioner's endeavor, nor do they establish how the benefits provided to his clients would result in broader national implications, and generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, while we acknowledge the submitted expert opinions; however, the issue here is whether the Petitioner has demonstrated the national importance of his proposed endeavor, and expert opinions are relied upon in determining whether an individual is well positioned to advance the proposed endeavor and not in demonstrating the national importance of the proposed endeavor. As such, the Petitioner has not established that his proposed endeavor reaches a level of national importance to warrant a waiver of the job offer requirement.[2]

[2] As the Petitioner has not established the national importance of his proposed endeavor, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs. Supra at INS v. Bagamasbad.

ORDER: The appeal is dismissed.