U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31677951

Date: JUN. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an agribusiness consultant, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts, or business, 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 the Petitioner's eligibility for the requested national interest waiver. 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 visa 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. Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once 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

The Director determined that the Petitioner qualified as an individual of exceptional ability, because he met at least three of the six criteria required for this classification, but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not established eligibility for a national interest waiver, and we will dismiss the appeal.

The first *Dhanasar* 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. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with Director's conclusion that the Petitioner's proposed endeavor, which aims to provide research, financing, and marketing services to agribusinesses, has substantial merit. Yet, the record does not establish that the endeavor rises to the level of national importance as contemplated in *Dhanasar*.

The Petitioner intends to provide consulting services to U.S. agricultural entrepreneurs in research, marketing, and finance through a company he founded.[2] The Petitioner indicates he will work to strengthen the agricultural sector in the United States working parallel to public initiatives to revitalize the agricultural sector.

The Director denied the petition, concluding that the Petitioner did not establish eligibility for the requested national interest waiver, as he did not establish eligibility under the *Dhanasar* three-prong framework. With respect to the first prong of *Dhanasar*, the Director determined that the Petitioner's endeavor had substantial merit, however he did not establish his endeavor was of national importance. Specifically, the Director concluded the evidence did not demonstrate that the Petitioner's work would result in benefits extending to the agribusiness field more broadly, in substantial employment opportunities, or other substantial positive economic effects commensurate with national importance as discussed in *Dhanasar*.

On appeal, the Petitioner submits a brief; additional education certificates; a market analysis on the agricultural industry; recommendation letters; numerous news articles concerning agriculture in the

[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 to be discretionary in nature).

[2] The record indicates the Petitioner incorporated this company in Florida and plans to base operates in Illinois.

United States; reports on the vulnerabilities of the citrus market in the United States; and a business plan for his proposed business.[3] He asserts that his proposed endeavor is of national importance because: it will have national or global implications; have significant potential to employ U.S. workers; have substantial positive economic effects; broadly enhance societal welfare; and impact a matter that is the subject of national initiatives.

Upon de novo review, we agree that the record does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor would have national importance. In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *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. 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. *Id.* at 893. To evaluate whether the Petitioner's proposed endeavor will have a broad impact we look to evidence documenting the "potential prospective impact" of his work.

Although the Petitioner's business plan states his intention is to provide research, financing, and marketing services to agribusinesses, strengthening the agricultural sector throughout the United States and internationally, he has not submitted sufficient detail and documentation to support this claim. For instance, the Petitioner's projections for the endeavor are not supported by evidence and the plan does not sufficiently detail how the prospective impact of his endeavor will reach beyond his clientele. Here, the submitted evidence does not show that the Petitioner's proposed endeavor would likely impact the agricultural sector more broadly at a level commensurate with national importance.

Similarly, the Petitioner submits evidence of public initiatives aiming to strengthen the U.S. agricultural sector and global food supply, asserting that this demonstrates his endeavor is of national importance. However, although the strength of the United States agricultural sector is an important issue, the Petitioner has not detailed how his specific endeavor, consulting for agribusinesses, would have a potential prospective national impact on this issue. Likewise, the Petitioner indicates that, although not discussed by the Director, his proposed endeavor should be considered as rising to the level of national importance because it would greatly improve societal welfare. For example, the Petitioner claims his proposed company intends to advise on sustainable agriculture, use biological products to control pests and disease, reduce the use of pesticides, support rural development, support food security, and foster economic growth. He claims he plans to bring innovation to the field and contribute to the health of Americans, including helping to promote Zumsil, a natural pesticide. However, the Petitioner has not provided sufficient explanation and supporting documentation to establish that his consulting business would have a national impact in these aspects of the agricultural sector and, even with evidence to support these capabilities, the business plan does not show how the prospective impact would have such broad effects on the national welfare, beyond his clientele. In *Dhansar*, we explained that the issue was not the national importance of a field, industry, or profession

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

In addition, the Petitioner has also not demonstrated that the specific endeavor he proposes to undertake would lead to substantial employment opportunities or other substantial positive economic effects commensurate with national importance as discussed in *Dhanasar.* Specifically, the Petitioner has not shown that his company's future staffing levels, 15 employees in 5 years, stands to provide substantial economic benefits to the region in which he proposes to operate or in the United States generally. Furthermore, although the Petitioner asserts there is the potential for indirect job creation resulting in 31 additional jobs in the same timeframe, there is little supporting evidence to show this level of employment opportunities would make up a significant population of workers to have a substantial economic impact regionally or nationally. Similarly, the Petitioner has also not demonstrated that the specific endeavor he proposes to undertake would offer other substantial positive economic effects for our nation. While the growth forecast for his company indicates that the business activity and revenue will grow, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar. Id.* at 890.

Accordingly, the evidence submitted on appeal does not overcome the Director's decision that the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under 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).

ORDER: The appeal is dismissed.