U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31474515

Date: JUNE 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business manager and consultant, 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 the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director dismissed the Petitioner's subsequent motion to reopen and reconsider. 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 qualify for 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 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:

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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

Although the Director did not address the Petitioner's eligibility for EB-2 classification, the record establishes that he qualifies for EB-2 classification as a member of the professions holding an advanced degree. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is considered the equivalent of a master's degree. *Id.* The Petitioner submitted evidence of his five-year Licentiate in Business Administration degree from the [redacted] in Venezuela and an evaluation of his educational credentials concluding his degree is the equivalent of a United States bachelor's degree in business administration. The Petitioner also submitted letters from employers demonstrating he has over five years of progressive post-baccalaureate experience in his specialty. Accordingly, the Petitioner has demonstrated that he qualifies for EB-2 classification as an advanced degree professional.

B. Proposed Endeavor

The Petitioner is a business manager and consultant who has worked for several multinational companies. In response to the Director's request for evidence, the Petitioner submitted a professional plan stating he would be the director of [redacted] a company offering financial and administrative services, consultancy and specialized advice to small, mid-sized and large private and public companies. On motion, the Petitioner submitted another professional plan stating his company would also foster financial literacy among high school students and would provide consulting in both business administration and financial education for individuals, entrepreneurs, educational institutions, nonprofit organizations, and businesses and corporations.

C. National Interest Waiver: 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. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined the Petitioner's proposed endeavor has substantial merit. We agree.

The Director concluded, however, that the Petitioner did not establish the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically

depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish his proposed endeavor would have substantial positive economic effects or broader implications in his field.

On appeal, the Petitioner asserts the Director did not sufficiently explain whether his motion to reopen was denied and the reasons for denial. However, the Director analyzed the relevant evidence submitted in support of the Petitioner's joint motion to reopen and reconsider and stated: "Your motion does not provide new facts, nor does it give reasons for reconsideration supported by any pertinent precedent decisions. Accordingly, your motion is dismissed per 8 CFR 103.5(a)(4)."

The Petitioner also claims the Director erred by noting that the Petitioner did not submit evidence of the legal formation of his company and stating "it is unclear" if the Petitioner could contribute to the industry. The Petitioner asserts the Director imposed a higher standard of proof than preponderance of the evidence and claims the Director's contradictory and ambiguous statements did not provide adequate notice of the reasons for denial. The Petitioner also submits copies of our decisions in prior cases where we withdrew the Director's decision and remanded the matters to the Director for issuance of new decisions. These decisions were not published as precedents and bound only the parties involved in those individual cases. *See* 8 C.F.R. § 103.3(c). Although the Director's decision contains some language that is not directly relevant, de novo review of the record does not establish any error in the Director's ultimate determinations.

To establish the national importance of his proposed endeavor, the Petitioner initially submitted letters from three past employers who praise his work for their companies. [redacted] and [redacted] all state the Petitioner informed them about his project to continue his professional development within the United States. They all express confidence that his experience "will allow him to provide relevant information to his employer, advising them to make smarter decisions for the improvement of their business in the short and long term, which will allow them to achieve greater expansion and thus generate sources of employment."

On motion, the Petitioner submitted additional support letters. [redacted] and [redacted] all praise the Petitioner's skills and experience and recommend him "for his exceptional qualifications and the value he would bring to developing educational programs in business administration and financial principles for high school students in underfunded institutions."

The letters submitted initially and on motion are relevant to the second *Dhanasar* prong, which shifts focus to petitioners themselves and assesses whether they are well-positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890. However, in assessing national importance, we focus on the potential prospective impact of the specific proposed endeavor. *Id.* at 889. Here, the Petitioner's support letters praise his work, experience and abilities, but they do not address any national or global implications of the Petitioner's proposed endeavor, or other broader implications it would have in the fields of business administration and financial education. *Cf. id.* at 892 (stating Dhanasar submitted probative expert letters describing the importance of his specific research as it relates to U.S. strategic interests).

The Petitioner also submitted a letter from [redacted] of [redacted] expressing her opinion that the Petitioner is eligible for a national interest waiver. Ms. [redacted] states the Petitioner's proposed endeavor has national importance because the Petitioner is trained in International Financial Reporting Standards, has worked in important multinational companies, and is qualified to teach and train American professionals. Again, the Petitioner's experience and qualifications are relevant to the second *Dhanasar* prong which shifts the inquiry to the foreign national. When determining national importance, however, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. In his professional plan submitted on motion, the Petitioner states his company would design "personalized educational programs," develop curricular materials, and offer training and professional development programs, but he does not discuss how such work would extend beyond trainees and individual institutions to impact his field more broadly. 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. Here, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clientele to impact the fields of financial education and business administration more broadly at a level commensurate with national importance.

The Petitioner submitted articles on financial education of children and teens, financial literacy and illiteracy, racial disparity and inequity in school funding, and public-school funding in Texas. While these issues are relevant to financial education, the determination of national importance does not focus on the importance of issues affecting the field in general, but "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, none of the articles mention the Petitioner or address the potential prospective impact of his proposed endeavor.

The Petitioner claims his proposed endeavor would have substantial positive economic effects even if he "were to operate the business as a sole proprietor without any employee hires." In *Dhanasar* we discussed significant employment of United States workers as one possible indicator of national importance, but the Petitioner is correct in stating such employment is not required to establish national importance. On appeal, the Petitioner does not, however, specify how his proposed endeavor would have substantial positive economic effects beyond the individuals and companies that may retain his services. *See id.* at 890 (discussing substantial positive economic effects as indicative of national importance).

The Petitioner has not established that his proposed endeavor would have substantial positive economic effects; or national, global, or other broader implications within the fields of business administration and financial education demonstrating national importance.

D. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of his specific proposed endeavor and he does not meet the first prong of the *Dhanasar* framework. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating 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).

III. CONCLUSION

The Petitioner has not established the national importance of his proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, he has not demonstrated that he is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.