U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31683512

Date: JUN. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a Project Manager, 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 had identified a specific proposed endeavor, established the national importance of that endeavor or established that he was well positioned to advance the proposed endeavor. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner asserts eligibility and provides additional statements regarding his proposed endeavor.

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.

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:

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third

- 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 Petitioner seeks to work in the field of project management with his own company, [redacted] The Petitioner did not initially provide supporting evidence with his petition. The Director sent a request for evidence (RFE) seeking additional documentation of the Petitioner's qualifications for EB-2 classification, the proposed endeavor, and eligibility under the *Dhanasar* framework. In response, the Petitioner provided evidence of his foreign degrees, a personal statement for each of the issues in the Director's RFE, financial statements and taxes for his current business, letters of support, a business plan, and contracts from past projects with railway companies. The Director determined that the Petitioner had not met his burden of proof in establishing the national importance of the endeavor, whether he was well positioned to complete that endeavor, or whether, on balance, it was in the best interest of the United States to waive the job offer and labor certification requirements because he did not identify the specific endeavor he proposed to undertake.

The Petitioner provided an article to the Director from [redacted] a trade magazine, published in 2022 regarding his current business and years of experience. The article states:

> [redacted] is involved extensively in the construction front of its business, where it undertakes repair and maintenance for homes that further improve its core service offerings. The company does bathroom and kitchen remodeling including additions. The construction trade preferences are Drywall, Flooring and Painting in Multi Family and Commercial construction developments. The Business however does grounds up Single Family residential development.

The article goes on to state, "[t]he business supplies maintenance equipment and parts, for buses and trains." While the article provides some detail regarding the Petitioner's operations in 2022, including several contract relationships with railway companies, it does not establish the Petitioner's future plans or the national importance of the proposed endeavor. Based on the information in the article, the Petitioner's company appears to provide services across a broad range of areas.

To the best we can determine based on the evidence provided, the Petitioner intends to work as a project manager for various railway companies, however, the record is incomplete regarding the scope of his proposed endeavor. On appeal, the Petitioner states that his market sector is in the bidding and procurement of government contracts with rail companies so that he may use "his technical skill in understanding the maintenance needs of the government transit agencies" and "propose solution in production to meet their RAIL maintenance/development needs at quoted costs." The Petitioner does

in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

not identify any specific rail companies in his personal statement or business plan, or further define the scope of work he provides to them.

The first prong of the *Dhanasar* framework, 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on "the specific endeavor that the foreign national proposes to undertake." *See id.* In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and 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.

Here, we agree with the Director that the Petitioner has not identified a specific proposed endeavor that he seeks to undertake. The Petitioner, on appeal, provides vague statements regarding project management in the transportation industry to advance railway expansion and safety. He contends that traveling by road is unsafe and that a thriving railway industry would lessen the number of road deaths. The Petitioner does not adequately explain how the specific proposed endeavor he aims to undertake would save the lives of individuals on U.S. roadways as claimed in his personal statement. He does not identify a specific railway project, location, or scope of services to be completed. While the Petitioner's business plan states there are three potential revenue streams, he does not provide details of those revenue streams, or the steps he would take to advance them. Instead, he makes general statements about rail travel and the transportation industry without referencing his specific work, how it would impact road safety, or its implications for the broader national economy.

The Petitioner's business plan does not provide a current or future staffing model for his company or support the revenue projections with probative documentation. The two contracts provided by the Petitioner indicate that he bid on, and won, government contracts to procure and supply specific parts to a northeast rail company. However, the Petitioner has not provided additional details regarding the contracts, the potential to win future contracts, or a greater explanation of the business model he intends to follow. Absent this information, the Petitioner has not established that the economic, scientific, or cultural impacts of his proposed endeavor would rise to the level of national importance. It is the burden of the Petitioner to identify his proposed endeavor and to provide probative evidence to support his assertions that it has national importance. *Matter of Chawathe*, 25 I&N Dec. at 375. As the Petitioner has not established that his endeavor's prospective impact supports a finding of national importance, he has not met the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility for a

national interest waiver under the second and third prongs of the *Dhanasar* analytical framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

ORDER: The appeal is dismissed.