U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31474415

Date: JUNE 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest**.** On appeal, the Petitioner submits additional documentation and asserts that he is eligible for the benefit sought. 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.-

To qualify for a national interest waiver, a petitioner must first show eligibility 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. 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.

[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 Director determined that the Petitioner qualified as an advanced degree professional but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we conclude that the Petitioner has not met the first prong of the *Dhanasar* framework and will dismiss the appeal accordingly.

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* 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 the initial filing, the Petitioner stated that his proposed endeavor was to provide strategic consulting services to "serve, help and support American small and medium-sized companies (SMEs) in the development and execution of commercial and sales actions, strategies and decision-making processes with a primary focus on stimulating and increasing these businesses' market valuation, revenues, product or service placement, and profitability."

The Director issued a request for evidence in which they requested, in part, additional evidence to establish that the Petitioner's proposed endeavor had national importance. While the Director noted that the Petitioner's intentions were to provide a valuable service, he had not demonstrated that the specific endeavor he proposed to undertake had significant potential to employ U.S. workers or otherwise offer substantial economic effects for the national economy.[2] In response to the request for evidence, the Petitioner detailed that he would develop and execute commercial and sales actions for companies, providing "tailored and innovative strategies to impose their decision-making processes, stimulate and increase their market valuation, boost job creation, and increase their contributions to the broader American economy." The Petitioner did not provide further detail on the specific prospective occupation or proposed endeavor that he would focus on to illustrate the nature of the work that he would perform during his day-to-day work activities. Nor did the Petitioner provide a consistent, detailed description explaining the manner through which he would prospectively deliver these services, supported by documentary evidence as requested by the Director.

The Director denied the petition, concluding that the record did not establish that the Petitioner qualified for a national interest waiver because he did not meet the 3-prong *Dhanasar* framework. In regard to prong one, the Director determined that although the Petitioner's proposed endeavor had substantial merit, the record did not demonstrate the proposed endeavor had national importance, as

[2] The Director also requested additional documentation to establish the second and third *Dhanasar* prongs.

the record lacked independent objective evidence of the Petitioner's future plans. The Director concluded that the Petitioner had not established that the potential prospective impact of the Petitioner's specific proposed endeavor to develop his consulting company had implications beyond the individuals the Petitioner would serve.

On appeal, the Petitioner submits a brief in which he reasserts his eligibility for a national interest waiver based on the evidence of record. The Petitioner references information in previously submitted articles and reports as evidence of the national importance of his endeavor as a strategic consultant. These articles and reports discuss the growth of strategic consulting and management consulting services markets in the United States and the importance of small businesses to the U.S. economy, the reasons that small businesses fail, an upward trend in small business applications, and the influx of federal funding to assist small businesses. While these documents provide insight into the role of small businesses in the economy and the challenges they face as they strive to succeed, they do not serve as evidence to show how the Petitioner would provide consultancy services to small- and medium-sized businesses at a scale that would have a national impact. The Petitioner also provided statements in which he discusses his entrepreneurial nature and its impact on the world, noting that the consulting market in the United States is a constantly growing industry, with great importance and demand.

While the evidence of record (including several letters of recommendations lauding the Petitioner's talents and professionalism) indicates that the Petitioner has extensive experience and an understanding of business development and strategies, the record does not include a plan or other indication of how the Petitioner will operate a strategic consultancy company that will impact businesses or the economy at the level of national importance contemplated under the first prong of the *Dhanasar* framework. The Petitioner has not established on appeal that his intent to apply his knowledge to his prospective clients is an activity that will have a broad impact on the economy. The record does not offer evidence sufficient to translate *how* the Petitioner's specific work stands to sufficiently impact U.S. interests or the relevant consulting business more broadly at a level commensurate with national importance.

While we acknowledge the Petitioner's assertion on appeal that his proposed endeavor will "boost job creation," he has not demonstrated that the endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. *See Dhanasar* at 890. He has not provided data or studies establishing that the location of his proposed endeavor is in an economically depressed area or how his business would impact the region or the regions in which his clients operate. He has not provided evidence of similar successful business models or other comparable examples to demonstrate the potential broader implications of his proposal. Absent probative evidence to show the realistic potential of the Petitioner's company to operate at all, it is not evident that the company will generate revenue to create jobs, to expand, or to otherwise notably impact the economy in a location in which it intends to operate. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's pursuits as a consultant for businesses would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Id.*

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reason for dismissal is 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 a noncitizen is otherwise ineligible). The petition will remain denied.

ORDER: The appeal is dismissed.