U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31474998

Date: JUNE 28, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but determining he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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

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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

Id.

II. ANALYSIS

The Petitioner is a project manager who intends to start his own company, proposed to be called [redacted] and "to work as a business consultant ... specializing in providing management consulting services with the goal of increasing the profitability of small and medium-sized American businesses."

The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

A. 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 the potential prospective impact of his company.

On appeal, the Petitioner contends he has established, by a preponderance of the evidence,[2] his eligibility for a national interest waiver. The Petitioner submits a brief in which he reiterates highlights of his business plan and emphasizes that his endeavor serves the interests of the White House's initiatives concerning small businesses.[3] We note that while the Petitioner's endeavor has substantial merit, the potential for a limited contribution to a proclaimed national cause cannot, itself, be considered national in scope. A discussion of the evidence of record as it relates to the Petitioner's eligibility under the first prong of the Dhanasar framework follows.

On appeal, the Petitioner asserts his firm will have national importance because:

i. It impacts a matter that government entities have described as having national

[2] See INS v. Cardoza-Foncesca, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

[3] See https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/25/fact-sheet-the-new-small-business-boom-under-the-biden-harris-administration/, accessed June 24, 2024.

importance or is subject to national initiatives, and it is not limited to a particular region and, thus, will benefit the U.S. nationally[; and,]

ii. Petitioner's Proposed Endeavor has significant potential to employ U.S. workers and has other substantial positive economic effects[.]

The Petitioner also claims his firm will provide business consulting services of national importance by offering comprehensive consulting services designed to support the growth of small and medium-sized businesses. The Petitioner's business plan asserts his intended company will work closely with clients to help them identify problems, offer advice, and propose practical solutions. The Company will evaluate its clients' operational processes to increase their productivity, financial margins, and customer service. [redacted] will help clients improve their sales, achieve cost savings and redesign their operational processes and will provide tailor-made services, creating customizable service packages tailored to each client's requirements. Upon establishing contact, the [redacted] team, headed by the Petitioner, will get to know all the client's business sectors and how they operate. "The company will approach each client highly [sic] and hire professionals who understand the importance of service and efficiency. The company will continually expand its service portfolio and offer services that meet industry standards and market demands. [redacted] will strongly emphasize developing productive and lasting client relationships. To enhance client relationships, the Company will focus on every interaction."

The Petitioner intends to locate his company in Florida, engage clients throughout Florida and expand to other states nationally via online services and virtually. He expects to start his company with a staff of five and expand to a staff of 11 in year five, with projected sales in year one of $452,400 growing in year five to $930,800. The Petitioner has not provided a sufficient foundation for these projections, such as the number and size of clients he will need to achieve them.

On appeal, the Petitioner reiterated that his company will specialize in developing business strategies for the vehicle auction business by analyzing existing auction businesses and identifying areas for improvement, help manage finances of vehicle auction, develop policies for compliance with regulations, ethics, and work safety, train vehicle auction employees and monitor result of the vehicle auctions. The record supports the Petitioner's extensive experience in the vehicle auction business.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead USCIS must focus on the "the specific endeavor that the foreign national proposes to undertake." See Dhanasar, 26 I&N Dec. at 889. While the Petitioner provided several articles in the record and on appeal emphasizing the impact of management consulting in the U.S., evidence in the record demonstrates the potential prospective impact of the Petitioner's proposed activities, that constitute the endeavor, is mainly on the Petitioner's employees and its customers, and not beyond.[4] Additionally, the provided articles pertaining to the impact of small businesses on the U.S. economy, including articles submitted on appeal, fail to demonstrate how the petitioner's specific endeavor has national or even global implications, has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The petitioner has not shown that working for and providing his expertise to [redacted]

[4] While our decision may not reference every document the Petitioner submitted, we have reviewed each one.

[redacted] would "undoubtedly benefit the United States through increased income, employment of U.S. workers, and contribution to the country's Gross Domestic Product (GDP)" or reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890.

The Petitioner claims his company "stands to impact the regional or national population at a level consistent with national importance." The record indicates, however, that the Petitioner proposes to work with individual companies and the relevant evidence does not demonstrate that the Petitioner's company will have any broader influence on his field. 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 business management consulting more broadly at a level commensurate with national importance.

B. 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, like the Director, 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.