U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30185456

Date: MAR. 1, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an accounting and financial services company, seeks to classify the Beneficiary as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that although the Beneficiary qualified for classification as a member of the professions holding an advanced degree, the Petitioner 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

To establish eligibility for a national interest waiver, a petitioner must first demonstrate a beneficiary's 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. Next, a petitioner must then demonstrate that a beneficiary merits a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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.

II. ANALYSIS

The Director concluded that the Beneficiary qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of the Beneficiary's proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The Petitioner stated on the Form I-140, Immigrant Petition for Alien Workers, that the Beneficiary intends to work in the United States as a finance specialist and consultant. In a personal statement submitted with the petition, the Beneficiary stated that he founded his own company, [redacted] "to provide tailormade accounting and financial consulting services characterized by excellence, transparency, and professionalism."[2] He further stated that he plans to offer services in tax preparation, tax planning, accounting, strategic business planning, and incorporation.

The Petitioner also submitted a copy of the business plan for the Beneficiary's company, testimonial letters, an expert opinion letter, and copies of industry articles and reports in support of the Beneficiary's eligibility.

The Director issued a request for evidence (RFE), noting that while the Petitioner's evidence was sufficient to establish that the Beneficiary's proposed endeavor has substantial merit and that he is well positioned to advance his proposed endeavor, the record as initially constituted was insufficient to demonstrate that the proposed endeavor had national importance. Specifically, the Director determined that the Petitioner had not demonstrated that the Beneficiary's proposed endeavor would impact the regional or national population at a level consistent with national importance. As a result, the Director requested a detailed description of the endeavor in order to evaluate eligibility for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner submitted an updated personal statement for the Beneficiary, which reasserted that the accounting and tax preparation services he will provide through his company are of national importance. The Petitioner also submitted an updated business plan for the Beneficiary's company, a new expert opinion letter, and letters from clients in support of the Beneficiary's eligibility.

[2] The record contains documentation relating to the Petitioner's formation of this company, including its Articles of Incorporation (Florida) and its IRS Employer Identification Number.

In denying the petition, the Director concluded that although the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate that the Beneficiary's work would impact the regional or national population at a level consistent with national importance. The Director determined that the Petitioner did not demonstrate that the benefits of the Beneficiary's proposed U.S. employment would reach beyond his clients to affect his field or the United States more broadly. On appeal, the Petitioner claims that the Director's decision was erroneous, and asserts that the Director erred by applying a "higher standard of proof" when evaluating the national importance element of *Dhanasar*'s first prong and by not analyzing the totality of the evidence, including the Beneficiary's personal statements, expert letters, testimonial letters from clients, and probative research.

With respect to the standard of proof in this matter, a petitioner must establish that their petition meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id*. at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director thoroughly analyzed the Petitioner's documentation and weighed the evidence to evaluate whether the Petitioner had demonstrated, by a preponderance of the evidence, that the Beneficiary meets the first prong of the *Dhanasar* framework.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the noncitizen proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. The Petitioner submitted information about the COVID pandemic's effect on financial advice businesses, the value of proper tax planning for businesses, the U.S. financial services industry, STEM careers in the financial and accounting fields, and unemployment rates for those with bachelor's degrees and those in the financial industry. In addition, the Petitioner provided articles discussing tax planning as a part of a company's risk management strategy, the benefit of accounting in the public sector, federal STEM education initiatives, roles and value of accounting in business, and slowed hiring among small businesses. The Petitioner also submitted information about U.S. relations with Brazil, the job outlook for financial managers, a talent shortage for business-minded professionals, the COVID pandemic's effect on the client-advisor relationship, strategies for improving STEM education, and U.S. monetary policy. While we note that this documentation supports the Director's determination that the proposed endeavor has substantial merit, it does not establish that the endeavor has national importance. We recognize the value of financial planning services; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

Similarly, the Beneficiary's personal statements emphasize the value of financial and tax planning services instead of focusing on the prospective impact of his specific endeavor. While the Beneficiary's statements reflect his intention to provide valuable financial and accounting services for his company's clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. Moreover, while he indicates that his proposed endeavor will stimulate the economy by creating jobs and revenue, neither the Petitioner nor the Beneficiary point to any corroborating evidence that would directly link

the specific endeavor to the overall economy's growth. Assertions must be supported with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

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." *Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the Petitioner has not shown that the Beneficiary's proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact the financial consulting field, the accounting and financial services industries, or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner provided recommendation letters from the Beneficiary's former employers and clients who discuss his accounting skills, knowledge, and financial activities, and attest to the quality of his work. In addition, the Petitioner presented contracts with several Florida businesses reflecting that they had engaged the Beneficiary's financial consulting services.[3] Although the letters praise his qualifications and professional accomplishments, the Beneficiary's skills, expertise, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See id.* at 890. The issue here is whether the specific endeavor that the Beneficiary proposes to undertake has national importance under *Dhanasar's* first prong.

The Petitioner also submitted two advisory opinions on behalf of the Beneficiary. The first, from an accounting professor at [redacted], states that the Beneficiary's proposed work is of national importance due to the roles of a financial consultant, the economic value of financial consultants, the effect of COVID-19 on the finance industry, the societal impact of the finance industry, and U.S. Government legislature pertaining to the finance industry. The issue here, however, is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id*. at 889.

Additionally, we note the professor's assertion that as a result of the COVID-19 pandemic, the "dire need for financial advisors is apparent." We are not persuaded by the professor's claim that the Beneficiary's proposed endeavor has national importance due to the shortage of professionals in his industry, as there is no indication that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

We also reviewed the opinion letter from a professor of finance at [redacted] The professor discusses the Beneficiary's skills and abilities as a financial consultant, speculates on how his services can potentially improve business practices and improve productivity of companies, and notes that the Beneficiary's company has several current contracts for the provision of financial services. The professor does not, however, offer any persuasive detail concerning the Beneficiary's proposed endeavor or how his endeavor's impact would extend beyond the companies with which he has current contractual obligations or those that he will serve in the future.

[3] The Petitioner's evidence also includes corporate filing records for seven South Florida companies for which he claims to have provided consulting services.

USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable."). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id*. Here, the letters from the professors and the Beneficiary's employers and clients do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Beneficiary's specific proposed work as an operator of a financial consulting company offers broader implications in the fields of finance or accounting that rise to the level of national importance.

We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and 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." *See Dhanasar*, 26 I&N Dec. at 890. Although the Petitioner recounts the value and importance of the Beneficiary's financial consulting services and its general impact on business growth, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession in which the individual will work. *Id*. at 889.

The Petitioner did not provide evidence to demonstrate how the Beneficiary's business operations will have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. The business plan includes industry and market analyses, information about his company and its services, financial forecasts and projections, marketing strategies, a discussion of the Beneficiary's work experience, and a personnel plan. Regarding future staffing, the business plan anticipates the Beneficiary's company having five full-time employees by its fifth year of operations. However, the plan did not elaborate on these projections or provide evidence supporting the need for these employees. In addition, while the business plan offers sales projections of $282,000 in year one, $338,400 in year two, $406,080 in year three, $487,296 in year four, and $584,755 in year five, neither the Petitioner nor the Beneficiary adequately explain how these sales forecasts were calculated.

The record does not support that the direct creation of five jobs or the expected revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework. Specifically, the Petitioner has not shown that the future staffing levels and business activity of the Beneficiary's company stands to provide substantial economic benefits in Florida or the United States. While the sales forecast for the company indicates that the Beneficiary's company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

In addition, although the Petitioner asserts that the Beneficiary's company provides employment opportunities to individuals in the United States, it has not offered sufficient evidence that the area where the Beneficiary's company operates is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, tax revenue, or business activity.

Accordingly, the Beneficiary's proposed work does not meet the first prong of the *Dhanasar* framework.

Finally, we note the Petitioner's submission of two of our non-precedent decisions on appeal, in which each petitioner sought classification as an individual of extraordinary ability and we sustained the appeals. First, these two petitioners sought employment-based first preference (EB-1) immigrant classification, which is different from the EB-2 immigrant classification sought by the Petitioner on behalf of the Beneficiary in the instant case. Second, neither decision was published as a precedent and, therefore, these decisions do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

In summation, the Petitioner has not established that the Beneficiary's proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, the Beneficiary is not eligible 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 the Beneficiary's eligibility under the remaining *Dhanasar* prongs. *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).[4]

III. CONCLUSION

As the Petitioner has not demonstrated that the Beneficiary meets the requisite first prong of the *Dhanasar* analytical framework, we conclude that it has not demonstrated that the Beneficiary is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[4] We note the Petitioner's assertion on appeal that the Director disregarded the regulation contained in 20 C.F.R. § 656.3, making it legally impossible for a business owner to file a labor certification on his or his own behalf. Since the identified basis for this decision is dispositive of the appeal, we will reserve this issue for future consideration should the need arise. *See Bagamasbad*, 429 U.S. at 25-26; *see also L-A-C-*, 26 I&N Dec. at 516, n.7.