U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35761201

Date: MAR. 5, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, an environmental scientist, 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 that is 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 Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner qualified for a national interest waiver. 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 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. *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

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

- On balance, waiving the job offer requirement would benefit the United States.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded that the Petitioner qualified as an advanced degree professional. 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.

The Petitioner initially stated that he intended to work as an environmental scientist and specialist, citing his academic and career work in the study of waste management. In response to a request for evidence (RFE) from the Director requesting clarification of the Petitioner's proposed endeavor, the Petitioner described his intention to operate a company that would provide consultancy services to the public and private sectors in the state of New York on subjects including providing environmental impact assessments, waste management planning, reducing food and packaging waste, and exploring opportunities to convert waste to energy.

The Director determined that the Petitioner's response to the RFE constituted a material change to the petition, asserting that the Petitioner's initial intention to work as an environmental scientist differed from his more detailed endeavor to operate a waste management consultancy business in the field.[2] The Director then concluded that the Petitioner did not establish either the substantial merit or national importance of his original endeavor. On appeal, the Petitioner reiterates his explanation of the substantial merit and national importance of his endeavor, stating that his RFE response was a clarification of his initial proposed endeavor.

Upon review, based on the initial evidence submitted and the RFE response, we disagree with the Director's determination that the Petitioner's response constituted a material change. The initial evidence did not include any specific endeavor, but focused almost exclusively on the Petitioner's previous work and qualifications to continue work in the field of environmental science. We consider the Petitioner's RFE response describing his intention to continue his work in the field in a consultancy capacity as providing a more detailed explanation of his proposed endeavor. We further conclude that the Petitioner's proposed endeavor to offer consultancy services to manage and reduce waste has substantial merit. However, for the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his endeavor in order to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

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

[2] A petitioner may not make material changes to a petition in an effort to make an apparently deficient petition conform to eligibility requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1988).

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 "the specific endeavor that the foreign national proposes to undertake." *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. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. *Id.* at 889.

To demonstrate the national importance of his proposed endeavor, the Petitioner submitted letters of support discussing his abilities as an environmental scientist, including his diligence and skills related to problem-solving and communication. These letters, however, do not offer insight into a specific endeavor that the Petitioner intends to undertake. The Petitioner also submitted letters of interest in his proposed endeavor from two investors; these letters, however, do not speak to how the Petitioner's proposed endeavor would operate at a level commensurate with national importance. We also note that evidence of the Petitioner's experience and education, as well as expressions of investor interest, generally relates not to the national importance of an endeavor, as discussed in the first prong of *Matter of Dhanasar*, but to the second,[3] which evaluates whether a petitioner is well positioned to advance an endeavor. As such, the letters do not sufficiently demonstrate the national importance of the Petitioner's proposed endeavor.

The Petitioner also provided information concerning the environmental impacts of waste management and a business plan that describes various consulting services to be provided by his business to private and public sectors, including providing waste mitigation strategies to businesses; oversight of waste management projects for municipalities, corporations, and institutions; and the assessment of community needs to develop pilot programs to improve recycling processes. The Petitioner, however, did not specifically describe in either his statement or his business plan how he would undertake an endeavor of a scale that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. The record does not contain documentation of specific strategies that the Petitioner intends to deploy through his consultancy business that would have outcomes at a national level. While the business plan offers an overview of the services the Petitioner intends to provide, the asserted national importance of his proposed endeavor relies on discussion of the importance of effective waste management; the Petitioner has not explained how his individual company would have a national-level or state-wide impact by providing specific services to overcome issues such as logistically and financial burdensome waste generation in New York, low recycling rates, density and geographical constraints, or the reliance of New York City on waste exports.

As to whether the Petitioner's proposed endeavor could prospectively result in significant job creation, the record does not include independent evidence to demonstrate how his company would have a prospective national impact. For example, the business plan states that the Petitioner anticipates hiring

[3] Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision.

24 individuals by his company's fifth year of operation, resulting in revenue totaling $2,260,480 and tax contributions totaling $344,358. The Petitioner has not, however, provided a sufficient basis for these projections, nor are the numbers corroborated by probative evidence sufficient to demonstrate that it is more likely than not that the company will have a substantial positive economic effect within the waste management field. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. He has not done so here.

The Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the nation. Specifically, he has not shown that his business stands to provide substantial economic benefits to any particular locality or to the United States overall. While the business plan broadly describes a company that would provide waste management strategies to private and local sectors to benefit the U.S. economy and the environment, these asserted national impacts are not sufficiently supported by objective evidence related to the Petitioner's specific proposed endeavor. Further, it is not clear how a business of the size and scope described in the business plan would significantly impact a certain region in which his employees or clients are located. The Petitioner has not provided sufficient evidence to show that he would employ a significant population of workers in a particular region, nor has he shown that his proposed endeavor would offer substantial economic benefits through employment levels, business activity, or tax revenue. As such, the Petitioner has not demonstrated that the prospective benefits to the regional or national economy resulting from his endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

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 reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the second and third prongs of 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 an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.