U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37191153

Date: MAR. 06, 2025

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 an individual of exceptional ability, 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 did not qualify for the underlying EB-2 classification as an individual of exceptional ability and 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 pursuant to 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

the national economy, cultural or educational interests, or welfare of the United States. 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,[2] 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.

Id.

II. EXCEPTIONAL ABILITY

Because the Petitioner has not indicated or established that he qualifies as a member of the professions holding an advanced degree, he must meet at least three of the regulatory criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3). The Director concluded that the Petitioner fulfilled four out of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), but in the final merits determination, he did not show a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

After reviewing the evidence in the record, we will withdraw the Director's conclusion made in the final merits determination. Overall and considering the factors as they are presented by the Petitioner, he has sufficiently demonstrated a degree of expertise significantly above the ordinarily encountered is his field of financial markets specializing in wealth and asset management. For example, the Petitioner founded a company in 2008 that offers investors financial guidance, and held critical roles as co-founder, chief executive officer, and chairman of the board of directors. This company serves a client base of 3,800 individuals and manages assets totaling $650 million. The Petitioner's company was also featured several times in major trade publications discussing the company's achievements and successes. In addition, as a member of ABAI (Brazilian Association of Investment Advisors) and its regulation working group, he was responsible for formulating legislative proposals to ensure the financial market's effective operation. In this role, the Petitioner was one of the drafters of the bill proposals that led to the enactment of four Securities and Exchange Commission resolutions in Brazil. We will withdraw this portion of the decision since the Petitioner established that he qualifies as an individual of exceptional ability.

[2] *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).

III. NATIONAL INTEREST WAIVER

The remaining issue to be determined 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 his 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 individual proposes to undertake. *Matter of 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.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The Petitioner stated that he is a professional with recognized expertise as a professional in the field of financial markets specializing in wealth and asset management. With respect to his proposed endeavor, he plans to manage his company that was established in 2021 and offer financial advisory services to Brazilian investors. According to the business plan, the services provided by the Petitioner's company will include to help clients find the best investment opportunities; advise the Brazilian company on how to invest in the United States; and, teach Brazilians on how to invest in the United States. The Petitioner indicated that he would leverage his customer base of more than 3000 people and companies from his company that he established in Brazil, and stated that he anticipates a "significant surge in the volume of investments flowing from Brazil to the United States."

In the decision denying the petition, the Director determined that the Petitioner had not established neither the substantial merit nor the national importance of his proposed endeavor. [3] The Director stated that the Petitioner did not demonstrate that his undertaking will have a broader impact on the field outside of his prospective company and/or clients. The Director also indicated that the Petitioner had not shown his proposed work has broader implications in the field, significant potential to employ U.S. workers, or other substantial positive economic effects.

On appeal, the Petitioner contends that his proposed endeavor will contribute to expanding or increasing the total amount of financial capital in the U.S. by leveraging his business relationships and expertise to increase the U.S. investments, attract foreign investment, and execute strategies to invest these funds in the U.S. financial markets. He further states that since his proposed endeavor can bring in millions in foreign investments, it will positively impact the U.S. trade's balance and enhance liquidity in the financial market and ultimately lower interest rates. The Petitioner again summarizes his prior employment experience and qualifications, and he asserts that his past contributions and achievements demonstrate that he has made and continues to make contributions of significant impact. In addition, on appeal, the Petitioner generally reiterates the previously claimed economic impacts of his proposed business, and the benefits of his profession and his qualifications, but does not provide any new evidence or arguments which overcome the Director's determination.

Regarding the substantial merit of the proposed endeavor, the record included documentation of how the U.S. financial service industry is fundamental to the U.S. economy, including the role of a strong

[3] The Director also found that the Petitioner did not meet the second and third prongs of *Dhanasar*.

financial services sector and the role of financial advisors. Since the Petitioner will work with clients to invest into the United States and create customized plans and provide sound financial recommendations to help achieve financial confidence for clients, he is beneficial in assisting customers and companies with financial securities and the economy. The proposed endeavor has substantial merit.

Regarding national importance, the Petitioner reiterates on appeal that his proposed work is of national importance because he is managing a company that will provide expertise in the field of financial markets specializing in wealth and asset management and would stand to broadly enhance society welfare, offer significant potential to employ U.S. workers, provide substantial positive economic effects, have national or even global implications in the field, and impact national initiatives.

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 foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. As it relates to the Petitioner's experience and ability claims, those relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. Moreover, the Petitioner must establish the national importance of his business rather than the importance of wealth and asset management. Further, "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.* The broader implications of the proposed endeavor, national and/or international, can inform us of the proposed endeavor's national importance. That is not to say that the implications are viewed solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. And 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.

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. While the Petitioner's statements reflect his intention to provide valuable wealth and asset management services for his 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. 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. Although the Petitioner contends that he would contribute to expanding or increasing the total amount of financial capital in the U.S. by leveraging his business relationships and expertise to increase the U.S. investments, attract foreign investment, and execute strategies to invest these funds in the U.S. financial markets, the Petitioner did not provide documentation or information regarding these investments to show that they do in fact make an impact in the financial markets. Further, the record does not establish the Petitioner has plans to introduce novel methodologies or techniques that may be disseminated to or adopted by others operating in the field or industry.

Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his clientele to impact the financial services industry, or the U.S. economy more broadly at a level commensurate with national importance.

Finally, we agree with the Director's conclusion that the Petitioner did not establish that his endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* While the Petitioner asserts that the cumulative success and investments of his customers can boost the overall economy of the United States, the record does not sufficiently support these assertions. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would rise to the level of national importance.

In the business plan, the Petitioner indicated that by the fifth year of operations he anticipates his company will have an annual revenue of approximately $8 million. He also indicated that by the fifth year of operations, he intends to create 10 direct jobs and 36 indirect jobs generating a total payment of wages of $2,456,201.00. However, the business plan does not provide sufficient explanation for the basis of these projections. In addition, the Petitioner does not elaborate on the 36 indirect jobs he anticipates his company will create, such as the type of jobs those would be, the breakdown of part-time versus full-time positions, and where they would be created. Even if the endeavor's revenue and job creation projections were more than conjecture, they do not establish that the endeavor would operate on a scale rising to the level of national importance, as the Petitioner has not explained how these proposed employment numbers and revenue will impact the area of intended operations, nor has he provided evidence that his business operations will impact an economically depressed area. Further, the Petitioner stated that the company will expand to [redacted] by year five. However, the plan does not provide sufficient detail of the basis for these projections or adequately explain how these sales and staffing targets will be realized. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Because the Petitioner has not established the Beneficiary's proposed endeavor is of national importance as required by the first prong of the *Dhanasar* precedent decision, the Beneficiary is not eligible for a national interest waiver. As the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding eligibility under the second and third *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

IV. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that the Beneficiary is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.