U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30390361

Date: MAR. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business manager, seeks second preference immigrant classification (EB-2) 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 EB-2 immigrant 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. 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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:

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director determined that the Petitioner's endeavor has substantial merit but not national importance under the first prong of *Dhanasar*.[2]

Although the Petitioner asserts on appeal that the Director's decision "contains numerous erroneous conclusions of both law and fact," he does not indicate where the Director misapplied law or policy in the decision. The Petitioner mainly contends that he has previously provided sufficient evidence to show the national importance of his proposed endeavor. We examined the record, including the Petitioner's resume, his professional plan (along with web-based articles and reports on the importance of small businesses and the talent shortage in business management), letters of recommendation, and an expert opinion letter. While we do not discuss each piece of evidence individually, we have reviewed and considered each one. Upon de novo review, we agree with the Director that the Petitioner did not demonstrate his endeavor satisfies the national importance element of *Dhanasar*'s first prong, as discussed below.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake and we consider its potential prospective impact. *Id.* In *Dhanasar*, we noted 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." *Id.* at 890.

The Petitioner's initial professional plan from October 2022 states that his proposed endeavor is to "offer my vast experience and knowledge as a business administrator focusing on financial management, cost control, cost analysis, and negotiations with customers and suppliers in order to always bring the best financial result to the company" and "apply my strong communication skills within the company to contribute to the development of new leaders and team training to obtain more results in sales, bring more capital to the company, generate productivity gains, and seek gain and speed in sales and financial results."

In response to the Director's request for evidence (RFE), the Petitioner submitted an updated professional plan stating the following:

[2] The Director further concluded that the Petitioner did not meet the second or third prong of *Dhanasar*.

> I intend to perform as a Business Administrator and provide my specialized services in Team management, direct sales, and leadership to impact the field of business administration through innovation in the U.S. Due to my extensive professional experience in the sales and leadership industries, I intend to focus my contributions on these niches first while planning to serve other industries, including training new leaders and developing monthly sales campaigns.

The Petitioner claimed that his innovations and methodologies "will result in immeasurable contributions and impacts to the U.S. business administration section, including cost reduction, increased productions, quality assurance, enhancement of the workforce, job creation, and economic growth." However, the Petitioner has not provided any details regarding his techniques or methodologies, whether they are unavailable in the United States or better than that which is already offered in the United States. Instead, the Petitioner's proposed activities in his professional plan entail typical work of a business administrator, such as enhancing profitability of companies, empowering and developing sales teams, fostering collaboration and communication, and streamlining digital strategies for customer service. While individual employer or company may benefit from his business services, he has not offered a sufficient explanation or corroborating evidence for how this individual benefit rises to the level of national importance or will impact the field more broadly, as contemplated by *Dhanasar*: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.*

The Petitioner asserts on appeal that we should evaluate the prospective impact of his endeavor based on his past achievements and experience. The Petitioner further contends the evidence demonstrates how he has contributed to success of businesses throughout his career by increasing their sales and revenues. However, the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of his proposed work's prospective impact.

The Petitioner submitted an expert opinion letter from [redacted], an associate professor of marketing at [redacted] University. Professor [redacted] discusses the Petitioner's skills and abilities as a business administrator and speculates on how his services can potentially improve business practices and improve productivity of companies while generally claiming that business administrators are "the backbone of any business" and "a key part of any company." However, the opinion letter does not offer any persuasive detail concerning the Petitioner's proposed endeavor or how the endeavor's impact would extend beyond companies that he will serve.

In addition, Professor [redacted] asserts that the endeavor "impacts a matter that a government entity has described as having national importance" based on the United States' designation of "Brazil as a major non-NATO ally in 2019" and states that the Petitioner "plans to maintain positive relationships with corporations and government officials in Latin America and develop visibility within the United States to generate new business expansion in to the Latin American market." But the Petitioner has not claimed that he plans to specifically assist companies that enter the Latin American market. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory but will reject an opinion or give it less weight if it is not in accord with other information in the record or if it

is in any way questionable. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). As such, the expert opinion letter is not probative of the Petitioner's eligibility under the first prong of *Dhanasar*.

We also reviewed the Petitioner's resume and letters of recommendation from his former work colleagues. The authors of the letters praise the Petitioner's abilities a business administrator, and the personal attributes that make him an asset to the workplace. While the recommendation letters evidence the high regard for the Petitioner and his work, they do not discuss the Petitioner's proposed endeavor or specific impact of his endeavor.

On appeal, the Petitioner reiterates his contention that his proposed endeavor is nationally important because the rapidly growing business consulting industry is facing a talent shortage and business management professionals are integral to the business sector's success. The Petitioner also asserts that the United States government's initiatives regarding small businesses raise the national importance of his endeavor. We acknowledge that the Petitioner's work in business administration is in high demand and assisting small businesses to flourish has substantial merit. However, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

The Petitioner claims that providing business administration services to small and medium businesses to improve business strategies, gain business contracts, and increase administrative efficiencies in the United States would "extend beyond his professional practice" and "significantly impact the well-being of American businesses, promoting economic growth, progress, and, in some cases, preventing bankruptcy." While any basic economic activity has the potential to positively impact the economy, the record does not demonstrate how working for a company or companies as an individual business manager generates such significant economic activity that rises to the level of "substantial positive economic effects." *Dhanasar*, 26 I&N Dec. at 890. Without evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work, the Petitioner's claims linking his proposed endeavor to "great financial health for the U.S. businesses and investors, which will affect the entire economy" and "a positive ripple effect in the society concerning several layers of the U.S. society and creating new job opportunities for U.S. workers" are too attenuated to sufficiently show the proposed endeavor's impact at a level commensurate with national importance. Therefore, we conclude that the Petitioner has not established that his proposed endeavor of working as a business manager has national importance.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. As 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 *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

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established his eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.