U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30134252

Date: MAR. 14, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the transportation sales industry, 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 Nebraska Service Center denied the petition, concluding that the record did not establish the Petitioner's eligibility for the requested 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 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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Once 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.

II. ANALYSIS

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner has established his eligibility for a national interest waiver under the *Dhanasar* framework.

The first *Dhanasar* 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with the Director's conclusion that the proposed endeavor has substantial merit as the endeavor falls within areas we concluded could demonstrate an endeavor of substantial merit: business and entrepreneurialism. *Id.* However, while the Petitioner has established that the proposed endeavor has substantial merit, the record does not show it has national importance.

The record reflects that the Petitioner initially proposed to work in the U.S. as a sales manager / entrepreneur to manage and operate his U.S.-based management consultant service firm to "provid[e] marketing, sales process consulting, and hiring and headhunting services." Through his business, he asserted he would "advance U.S. business and trade," and "improv[e] business opportunities." He planned to rely on his "vast experience working with light to extra-heavy truck sales" to provide a unique value proposition that would "provide training and consulting focused on sales and marketing process and truck driving hiring. . . targeting the transportation sector." The Petitioner provided a definitive statement, a five-year business plan, recommendation letters from prior customers attesting to his experience within the truck sales field, an expert opinion letter, and industry reports and articles detailing the economic importance of immigrants, entrepreneurs, small businesses, and the anticipated growth of the management consulting and sales industries.[2]

The Director concluded that the evidence did not establish that his proposed endeavor was of national importance because his business plan indicated that, in the first five years of business, the Petitioner anticipated hiring only six employees and planned to rely on the "import of truck drivers from Brazil" [sic] on a monthly basis. As such, the Director determined that the Petitioner did not show the endeavor had "a significant potential to employ U.S. workers," nor did the Petitioner establish that the endeavor would otherwise have a prospective impact rising to the level of national importance.

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[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).

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

On appeal, the Petitioner does not offer any explanation or clarification regarding the Director's conclusion. Instead, the Petitioner's brief discusses multiple endeavors, which are substantially different from the endeavor described in the record. In addition to discussing his proposed business as initially presented, the Petitioner states he will "offer his expertise as an [e]ntrepreneur in the areas of digital media and IT," and "provid[e] Business Certification, IT Schools, Software Publishing, and IT Consulting in the U.S." As digital media, business certification, or IT services were not a part of the Petitioner's proposed endeavor in the record before the Director, we will not consider them for the first time on appeal. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak* 14 I&N Dec. 45, 49 (Comm'r 1971). The Petitioner cannot materially change the proposed endeavor on appeal in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). As such, we will only consider the endeavor as it was described before the Director.

The Petitioner also generally alleges that the Director did not apply the correct burden of proof and failed to properly consider the evidence on record showing his experience in the field and the impact of his proposed business endeavor, noting that the Director's decision did not consider, among other things, the Petitioner's business plan and definitive statement. Yet, the Director based their conclusion primarily on their review of those exact documents, which included contradictory statements regarding the Petitioner's proposed employment of U.S. workers. While we acknowledge that "the potential to employ U.S. workers" is just one factor that we consider when evaluating an endeavor's national interest, the record does not show that the Petitioner's endeavor otherwise rises to the level of national importance contemplated under *Dhanasar*.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the 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.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon a de novo review of the record, we see no error in the Director's evaluation of the evidence, as it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

Turning to the Petitioner's specific endeavor, the Petitioner asserts that, because the endeavor's goals, which include working with its customers to "optimiz[e] logistics, enhance[e] distribution networks, and improv[e] overall efficiency in the road transport industry," align with federal initiatives aimed at modernizing infrastructure, this is sufficient to establish its national importance. We disagree. While the stated alignment of these goals with federal initiatives may speak to the substantial merit of the endeavor, it does not establish the specific endeavor's potential prospective impact. Moreover, the Petitioner has not shown how optimizing logistics and operations for his potential customers would improve the overall efficiency in the transportation industry or lead to "broader implications" commensurate with national importance. *Dhanasar* at 889.

According to the business plan, the Petitioner will provide management consulting services with a particular focus on marketing, sales process consulting, and hiring and headhunting services. The

Petitioner asserted that this endeavor is also of national importance because it will "generate substantial ripple effects upon key commercial and business activities. . ." Yet, the record does not corroborate these assertions. The business plan claims that the company will have a positive impact on the management consulting industry and the U.S. economy due to its anticipated revenue of $3.6 million, and the payment of $962,000 in wages for six direct jobs in the first five years of operations. Notably, only three of the six jobs will be full-time, and the Petitioner provides no explanation for the basis of these revenue projections, nor does he elaborate on how the proposed employment numbers will impact the area of intended operations. Even if the endeavor's revenue and job creation projections were more than conjecture, they nevertheless do not suggest that the endeavor would operate on a scale rising to the level of national importance. While any basic economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the projected economic activity of his proposed endeavor rises to the level of national importance.

The record reflects that the Petitioner has several years of experience working within the truck sales industry. The letters of recommendation commend the Petitioner for the development of "marketing strategies" which "increase[ed his customer's] business in terms of customer service, cost reduction, and target audience," and for providing his customers with knowledge and insight "the competition could not provide." Importantly, however, a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of his proposed endeavor.

The Petitioner also submitted numerous articles identifying various leadership strategies, the importance of IT to sales management, the highest paying sales jobs, and how to increase sales and business operations. Notably, several of the articles are educational guides directed toward business professionals. Beyond a blanket statement that these articles demonstrate the economic implications of the Petitioner's endeavor, he did not adequately explain how they establish its national importance. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Commensurate with that burden is responsibility for explaining the significance of the proffered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014). Moreover, the reliance on the management consulting industry and the importance of entrepreneurship in general does not establish that the Petitioner's specific endeavor has national importance.

Likewise, while the economic importance of immigrants, entrepreneurs, small businesses, and the trucking industry to the U.S. economy is relevant, the pertinent question in determining national importance 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* at 889. Accordingly, the Petitioner's reliance on background information and statistics concerning entrepreneurs and business development is not persuasive.

We recognize the Petitioner intends to focus on the trucking and transportation industry; however, the Petitioner has not explained how his "vast experience working with light to extra-heavy truck sales" will translate to impactful services to the industry beyond his direct customers. In *Dhanasar*, we discussed how teaching would generally not impact the field of education more broadly in a manner which rises to national importance, as its impact is limited to a petitioner's immediate students.

Dhanasar at 893. Here too, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his potential customers to impact his field more broadly at a level commensurate with national importance.

We also reviewed the expert opinion from Dr. V-L-, and conclude the opinion provides little additional explanation to establish the national importance of the Petitioner's proposed endeavor. Dr. V-L- does not discuss the Petitioner's specific proposed endeavor and makes no mention of his planned business. In fact, a significant portion of the expert opinion letter is focused on the importance of marketing managers, which is not consistent with the Petitioner's proposed endeavor of a sales manager / entrepreneur. 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). 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.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

Finally, we note that the record shows the Petitioner intends to base his company in a Small Business Administration HUBZone, which is "linked to a National Initiative and, therefore, of National Importance." However, this misapplies the *Dhanasar* framework. In *Dhanasar*, we explained 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 be considered to have national importance." *Dhanasar*, 26 I&N Dec. at 890. While the Petitioner indicated that he had founded the company, the record does not contain any evidence establishing the company's formation, nor is there any evidence establishing its physical location. Therefore, the Petitioner has not offered sufficient evidence that his business will in fact be in a HUBZone, and the Petitioner's business plan states that he does not qualify[3] and does not intend to be eligible for the HUBZone program. More importantly, the record does not adequately establish that increased employment in these designated underutilized business zones would have positive economic effects commensurate with national importance, especially given that the Petitioner only anticipates employing six employees in the next five years, three of which will be part-time positions. So, the fact that the Petitioner's proposed endeavor may be in a HUBZone does not establish that the Petitioner's endeavor is of national importance.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

[3] There are several required qualifications to participate in the program, including that the business seeking to participate in the HUBZone program must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.