U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37191957

Date: MAR. 14, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a software engineer and researcher, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had established the national importance of his proposed endeavor, among other findings. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. 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. *Id*.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) 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. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree, a determination the record supports.[3] In denying the petition, the Director determined that the Petitioner's proposed endeavor had substantial merit under the first *Dhanasar* prong and that he was well-positioned to advance his own business under the second prong. However, the Director concluded that the Petitioner had not sufficiently demonstrated his endeavor's national importance under the first *Dhanasar* prong.[4] Specifically, the Director determined that the Petitioner had not provided independent objective evidence that his proposed company would have substantial positive economic impacts or broader impact on the field outside of his prospective company or clients. The Director also concluded that the Petitioner had not supported his claim that his company would deliver significant advancements in public health and the health tech industry.

The record includes the Petitioner's curriculum vitae, a business plan, a personal statement, academic records, professional certificates, letters from employers, recommendation and expert opinion letters, and industry research and articles. In response to a request for evidence (RFE) from the Director, the Petitioner also submitted impact analysis report elaborating the business plan. With the petition, the Petitioner asserted that he and his spouse intended to develop software applications (apps) to expand their fitness and lifestyle business. He indicated that he currently works as a software engineer and has conducted research and quality assurance work which he has presented at conferences and that he has also contributed to developing manufacturing and data integration software tools as well as applications. He and his spouse created a social media page in 2018 regarding their own weight loss and lifestyle changes and decided to found a social media-based platform to provide individual coaching to others with similar goals. Although the Instagram page had more than 186,000 followers, which increased by 100-200 people each month, the Petitioner stated that existing social media platforms had limited functionality, which is why he intended to use his years of knowledge and experience in software development to grow the business and create jobs for Americans.

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[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).

[3] The Petitioner submitted documentation of his bachelor's degree in software engineering along with a master of science in electrical engineering and a doctoral of philosophy in electrical and computer engineering.

[4] The Director additionally determined that, on balance, it would not be beneficial to the United States to waive the requirements of a job offer.

The Petitioner's business plan detailed the following: The company has operated in Canada, where the couple currently reside, since 2019 and has generated increasing revenue and profit each year, which they continued to re-invest in the company. He expected the profits to continue increasing with the addition of customized apps and software and anticipated hiring 17 new employees by the end of the business's fifth year, including group coaches and administrators, a marketing specialist, sales representatives, nutritionists/dietitians, and software developers. Americans today live shorter lives due to the consumption of processed foods and the impact of poor diet on health outcomes. The Petitioner claimed that his endeavor would reduce obesity-related illnesses, encourage Americans to pursue healthier lifestyles, and eventually reduce economic burden for the U.S. health care system. His app would be based on artificial intelligence and propose to a nutritionist what to recommend to a client to develop a plan to meet their goals as well as allow users to track their food intake and make healthier choices regarding specific foods and restaurants. The company would initially target people and nutritionists in Florida and later expand nationwide. He claimed that immigrant entrepreneurs make significant contributions to the United States Gross Domestic Product and state, local, and federal taxes, as well as creating job opportunities in the science, technology, engineering and math fields.

On appeal, the Petitioner maintains that he has demonstrated eligibility for the national interest waiver, including the national importance of his proposed endeavor. He disputes the Director's finding that his company would not offer significant advancements in public health and asserts that he has supported this claim with evidence of improvements to the health and well-being of end-users of nutrition apps, including the American people. He asserts that the average cost of medical expenses for obese adults is $1,861 higher than the average cost of medical expenses for healthy adults and that his company will have a ripple effect in reducing these costs nationwide. Regarding the economic impact of his proposed endeavor, he contends that the business plan demonstrates the company's goals, strategies, and financial projections, including his ability to pay $1.8 million in payroll expenses and $1.23 million in taxes at the end of the fifth year. He also states that his endeavor's influence will extend across state borders and bolster the national economy by creating 174 direct jobs and an additional 1,000 indirect jobs by the end of its fifth year. He claims that the app economy supports over 2.2 million jobs nationwide and that small developers like him have experienced an 118% increase in revenue the past two years. The Petitioner argues that the sector of proposed endeavor, technology, is in one of the fastest-growing sectors in the United States and that nutrition apps in particular are expected to grow by nearly $3 billion between 2023 and 2027.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *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.* This impact need not be geographically national in scale but must demonstrate broader impact to a particular area, region, or industry. *Id.*

Here, the Petitioner's reliance on the national importance of the goals his endeavor seeks to address is misplaced. Merely working in an important field is insufficient to establish the national importance of a proposed endeavor without evidence documenting the "potential prospective impact" of a petitioner's work. *Id.* In this case, the Petitioner has not provided sufficient relevant, probative, and

credible evidence of this impact, as required. *See Matter of Chawathe*, 25 I&N Dec. at 376. We agree with the Director that the Petitioner's proposed endeavor to improve health and nutrition by creating an app with information and coaching services has substantial merit. However, he has not shown that the impact of his particular app or other functions of his business would extend beyond his clients. The support letters in the record discuss the Petitioner's past professional accomplishments rather than the potential of his proposed endeavor to impact his field more broadly, while the industry reports and articles discuss his field generally. We acknowledge the Petitioner's claim of a ripple effect, but the determination of a particular endeavor's impact on national importance hinges on an assessment of the broader societal or economic implications of the Petitioner's contributions, requiring a demonstration of broader benefits that extend beyond the confines of a particular industry. *See Dhanasar*, 26 I&N Dec. at 893. Therefore, while ripple effects may signify positive developments within a narrow area, they alone may not suffice to establish the requisite level of national importance. *Id.* at 890, 892. While the Petitioner claims that he would reduce national healthcare costs and improve users' health outcomes, he has not shown that his endeavor would have a broad impact on a scale of national importance.

Next, the Petitioner renews claims that his company will generate economic activity. In *Dhanasar*, we 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. Although the Petitioner detailed financial and staffing projections in his business plan and renews these claims on appeal, the record does not sufficiently describe the basis for these specific figures or how they will be realized such that they demonstrate substantial impact.[5] Rather, the Petitioner cites the past growth of his business in Canada along with growth of his field generally and its ability to create jobs.

As a general matter, it is the Petitioner's burden to prove by a preponderance of evidence that he is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* On appeal, the Petitioner refers to the industry reports and articles he submitted below. Commensurate with the Petitioner's burden of proof is the responsibility for explaining the significance of proffered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014); *see also Adler v. Duval Cnty. Sch. Bd.,* 112 F.3d 1475, 1481 n. 12 (11th Cir. 1997) (noting in a civil case that, absent plain error, it is not the place of an appellate body to grant appellants relief "based on facts they did not relate"). In this case, the Petitioner has not specified how these documents establish his eligibility for the national interest waiver as claimed. As such, and for the reasons detailed above, the Petitioner has not sufficiently established that his proposed endeavor in the United States will have national importance under the first *Dhanasar* prong.

Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining eligibility requirements for the requested national interest waiver. *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).

[5] Furthermore, as noted by the Director, the Petitioner claimed in his initial business plan that he would hire 17 employees aside from himself and in response to a request for evidence, stated in an impact analysis report that he planned to hire 174 employees. The Petitioner has not resolved this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.

ORDER: The appeal is dismissed.