U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30338142

Date: MAR. 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer and project manager, 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 EB-2 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.

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. If 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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 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 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.

With respect to his proposed endeavor, the Petitioner indicated that he intends to continue to work as a "project manager" operating his "own consultancy business in the U.S. dedicated to providing construction project management services in both the residential and public sector." He asserted that he plans "to help U.S. companies in the field of construction improve and optimize their existing processes in order to complete projects in a more timely manner, reduce costs, and increase revenue."

The Petitioner submitted the business plan for his company. This business plan includes industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company will employ 4 personnel in year one, 7 in year two, 10 in year three, 13 in year four, and 15 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while his plan offers revenue projections of $405,000 in year one, $648,750 in year two, $960,000 in year three, $1,230,000 in year four, and $1,500,000 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

The record includes information about the state of U.S. infrastructure, the Bipartisan Infrastructure Deal, the rise in new home construction, the U.S. construction industry, and the implications of U.S. national debt. In addition, the Petitioner provided articles discussing employment multipliers for the U.S. economy, the benefits of entrepreneurship to economic growth, and the ways construction professionals apply STEM in their everyday work. We agree with the Director that the submitted documentation establishes the Petitioner's endeavor has substantial merit. In determining national importance, however, the relevant question is not the value of infrastructure projects, entrepreneurship, or the Petitioner's general occupation; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor.

The Petitioner also provided letters of support from C-J-L-P-, C-L-, L-B-P-, F-L-, L-A-R-, N-M-, M-C-, J-G-S-, C-S-, R-C-, A-J-M-R-, C-G-, M-V-, E-J-H-, E-R-P-, E-L-, M-R-, J-A-, R-W-, R-R-, J-E-S-, E-A-M-M-, and J-M- discussing his project management capabilities and construction experience. The Petitioner's skills, knowledge, and prior work in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national."

Id. at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not demonstrated that his undertaking "stands to sufficiently extend beyond [his] business and its clients to impact the industry or field more broadly." The Director also indicated that the Petitioner had not shown his proposed work "has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation."

On appeal, the Petitioner contends that his proposed endeavor stands to "generate revenue within the country, directly and indirectly create jobs in the U.S., and yield positive economic effects related to the investment in infrastructure." He argues that his company "will be generating revenue in the country which will in turn raise the revenue raised by taxes in the U.S. without increasing the tax rate for Americans." The Petitioner also claims that his undertaking "will provide employment opportunities for individuals within local distressed areas, thus helping to reduce unemployment rates and supporting the region's economic development." He further indicates that his endeavor will "generate indirect employment" and "can cause large ripple effects" in the economy.

The Petitioner also points to his construction knowledge and "highly specialized level of skills as a project manager," but the first prong of the *Dhanasar* framework focuses on the proposed endeavor; not on the Petitioner's specialized skills and knowledge in his field. The national importance of the Petitioner's proposed endeavor stands separate and apart from his education, skills, and knowledge.[2]

In addition, the Petitioner states that his proposed endeavor "is of national importance because of the positive economic effects of investing in infrastructure" and "the benefits that it will offer the field of construction in the U.S." He asserts that his undertaking "will prove to be an invaluable asset to the overall construction industry and the entire domestic economy." The Petitioner further contends that his real estate development work stands to "bring substantial benefits to the U.S. in terms of overall economic development." The Petitioner also claims that his "company will help its clients to meet the demand for property development services, while consequently improving the real estate development and construction industries overall and, as such, increasing their contributions to the U.S. economy." He further argues that "his willingness to transfer and disseminate his skills and knowledge to the U.S. market will help create a qualified workforce, thereby contributing to meeting U.S. industry needs and benefiting the domestic economy."

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. 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

[2] *See Dhanasar* at 889-90.

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 construction project management services to his future 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. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field, the construction industry, the real estate market's housing supply, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his endeavor stands to generate direct and indirect jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers Florida or the United States a substantial economic benefit through employment levels, tax revenue, or business activity.

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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.