U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29849973

Date: MAR. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a security management specialist and entrepreneur, 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). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition. The Director concluded that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate his 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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest."

[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.

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 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.

II. ANALYSIS

The Petitioner proposes to establish a security management consulting business in Florida. The Director determined that the Petitioner established eligibility as a member of the professions holding an advanced degree.[3] We agree with the Director's determination.

However, the Director concluded that the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that the Petitioner did not demonstrate meeting any of the three prongs of the Dhanasar analytical framework. The Director determined that the record did not show that the Petitioner's proposed endeavor has substantial merit or is of national importance; that the Petitioner is well positioned to advance the proposed endeavor; and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[4]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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. 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." Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner proposes to establish a security management consulting business for which he would be its chief executive officer and head security consultant. The Petitioner's business plan indicates that the business would offer consulting and training for personal safety and security; asset security; tactical security operations management; logistics for security; civil defense; weapons; and marksmanship. The business would mainly provide U.S. companies and individuals with services for

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

[3] To demonstrate he is an advanced degree professional, the Petitioner submitted his academic certificates, the accompanying academic transcripts, an academic evaluation, and letters from his previous employer. The record demonstrates that he holds the foreign equivalent of a U.S. bachelor's degree in military science and at least five years of progressive experience in his specialty. See 8 C.F.R. § 204.5(k)(3).

[4] While we may not discuss every document submitted, we have reviewed and considered each one.

conflict resolution and public security; transportation of executives; safeguarding residential properties; and safeguarding company assets, employees, workplaces, and real estate.

We disagree with the Director's analysis of the record and find that the Petitioner's proposed endeavor has substantial merit. The Director's analysis stated that the Petitioner intention is to continue employment in his field and that he did not "provide specific insight as to what he intends to do as a [s]ecurity [m]anagement [s]pecialist in the [s]ecurity industry." However, in the substantial merit analysis, the Director focused on the Petitioner's initially submitted professional statement and did not consider his business plan which details his intention to continue as a security management specialist by establishing a security management consulting business in the United States. We withdraw the Director's finding that the Petitioner did not establish the substantial merit of his proposed endeavor.

The Director further found that the record did not establish that the Petitioner's proposed endeavor has the potential to extend beyond his business and clients at a level sufficient to demonstrate the national importance of his endeavor. The Petitioner contends on appeal that the Director "did not apply the proper standard of proof . . ., instead imposing a stricter standard, and erroneously applied the law . . . ." (emphasis omitted). The Petitioner further argues that the Director "did not give due regard" to the evidence submitted, specifically the Petitioner's resume outlining his experience; his business plan describing his expertise and credentials and the benefits of his endeavor; evidence of his contributions to the field; letters of recommendation; and industry reports and articles showing his endeavor's national importance. Upon de novo review, we find the record does not demonstrate that the Petitioner's proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

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). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

On appeal, the Petitioner argues, "[The Petitioner's] proposed endeavor explicitly states its intention to promote economic development through various channels." He claims that his business will "generate substantial ripple effects upon key commercial and business activities on behalf of the United States . . . by providing services that will address urgent matters regarding significant U.S. entities, such as the law enforcement sector and the criminal justice system – both which are intertwined with national security tendencies."

The record includes the Petitioner's statement and a business plan which emphasize the business' potential economic benefits. The plan also claims additional potential benefits, including enhanced public safety, support of national security to government agencies, development of new technologies driving innovation in the security industry, and enhancement of the nation's international competitiveness as a leader in global security. With respect to the potential economic benefits, the business plan explains that the business' initial office will be in an underutilized business community in [redacted] Florida with plans to establish additional locations in underserved business communities

in [redacted] Illinois and [redacted] California. The business intends to hire, train, and offer volunteer workshops in these underserved business communities to generate interest in the security industry. In addition to benefiting these underserved communities, the business plan claims economic benefits to the United States through the business' creation of direct and indirect jobs for U.S. workers; generation of federal income taxes; stimulation of competition through its use of technology; and stimulation of the U.S. financial market with increased investment and profits. The plan also includes a summary of the security industry's primary services and products; the Petitioner's professional qualifications; the business' shareholding; a general summary of the business' mission, values, and goals; an analysis of its operational cycle, opportunities, and strengths; analysis of the importance of technology in business; an analysis of the security services industry; and the business' proposed marketing, staffing, and financial forecasts.

However, the record does not sufficiently document the potential prospective impact, including the asserted economic benefits to Florida and the United States. The Petitioner has not provided corroborating evidence to support his claims that his business' activities stand to provide substantial economic benefits to the underutilized area of Florida or the United States. The Petitioner's claims that his security management consulting business will benefit the Florida or U.S. economy have not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide economic benefits to Florida or the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that his proposed job duties as the owner, chief executive officer, and head security consultant of his business would impact the security management industry more broadly, rather than benefiting his business and his proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The business plan projects that by its fifth year, the business will hire 40 direct employees, generate 200 indirect jobs, and generate almost $600,000 in taxes. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner has not provided corroborating evidence demonstrating that his business' future staffing levels and business activities stand to provide substantial economic benefits to Florida and the United States. While the Petitioner expresses his desire to contribute to the United States and its underutilized business areas, he has not established with specific, probative evidence that his endeavor will have broader implications in his field, will have significant potential to employ U.S. workers, or will have other substantial positive economic effects in an economically underutilized area of Florida. The Petitioner must support his assertions with relevant, probative, and credible evidence. See id. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 40 direct jobs, generating 200 indirect jobs, and generating almost $600,000 in taxes over a five-year period rises to the level of national importance.

The Petitioner also stresses the economic importance of immigrant entrepreneurs compared to native-born Americans. The Petitioner asserts his "proposed endeavor is clearly of national importance when considering how much a professional of his caliber can contribute to the U.S. economy, regardless of a labor certification." His brief quotes news articles relating to the economic benefits of immigrant entrepreneurs, and his business plan also provides similar claims. We recognize the significant contributions to the United States from immigrants who have become successful entrepreneurs;

however, merely starting a security management consulting business is insufficient to establish the national importance of the proposed endeavor.

The Petitioner further claims on appeal that the national importance of his proposed endeavor is evidenced in industry reports and articles. He argues that the reports and articles show his endeavor would have "economic implications – which very much affect nationwide activities and business productivity." His brief provides a lengthy description of how criminals are increasingly using technology to commit crimes. He then points out that his business will be "fully equipped to develop a personal, property, and private security services company." (emphasis omitted). He generally discusses that his business "will create value for U.S. organizations . . . through improved performance, achieved by providing objective advice regarding the optimization of business security processes using respected industry methodologies as well as implementing effective preventative techniques." He argues that "optimizing business security functions for U.S. companies will . . . directly impact the domestic job market, as improved industry patterns culminate in higher business demands and an increase in the creation of new jobs and workforce dependability." Also, his business plan provides a lengthy summary of the increase of cargo thefts throughout the United States and claims that the business could assist with the security for the cargo of businesses.

The reports and articles in the record mainly focus on the demand for law enforcement and private security service professionals, increased crime in schools, and the benefits of security service professionals. Specifically, the industry reports and news articles relate to the shortage of law enforcement professionals, the U.S. military predicting war with China in 2025, school crime rates, size comparisons of police departments, gun violence in schools, law enforcement employment data, private security outnumbering government police departments worldwide, benefits of public safety and security, U.S. cities contracting private security companies, a 2019 industry analysis of security services in the United States, and a 2017 U.S. government national security strategy report.

We recognize the importance of the security management industry and related careers; however, merely working in the security management field or starting a security management consulting business is insufficient to establish the national importance of the proposed endeavor. Instead, of focusing on the importance of an industry or the need for workers in a specific industry, 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 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. The record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of security 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. In Dhanasar, 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. The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor.

We note that the record includes an opinion from a lead instructor for United States Air Force Junior Reserve Officer Training Corps in [redacted] Texas. The opinion includes an analysis of the national

importance of the Petitioner's proposed endeavor stating, "[The Petitioner] would work in the United States in an area of substantial merit and national importance." (emphasis omitted). The opinion describes the security industry in Brazil, the importance of Brazilian businesses having a robust security program, and the expected increase in demand for security suppliers in Brazil. The opinion states that companies doing or planning to do business abroad in Brazil would benefit from the Petitioner's expertise and knowledge in military security.

However, the opinion does not consider the Petitioner's proposed security management consulting business, as described by the Petitioner in his statements and in the business plan. Contrary to the opinion, the record does not indicate that the Petitioner's proposed endeavor includes collaborative works between U.S. companies and Brazil companies, or that he is actively targeting U.S. companies that do business in Brazil, or plan to do business in Brazil. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm'r 1988). The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988); 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). The content of the opinion is lacking relevance because it discusses how the Petitioner's expertise would be beneficial to U.S. companies planning to do business in Brazil; instead of addressing how the Petitioner's specified proposed endeavor would satisfy the national importance element of the first prong of the Dhanasar framework.

We agree with the Director that the record does not demonstrate that the proposed endeavor extends beyond the Petitioner's business and his future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as the owner, chief executive officer, and head security consultant of his proposed security management consulting business offers innovations that contribute to advancements in his industry or otherwise has broader implications for his field. The economic benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed business' security management consulting work and the claimed economic and public safety results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. Since 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 his eligibility under the second and third prongs. 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 find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.