U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29847021

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 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 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 consulting and services business in the United States having worked in security management, investigations, and fraud prevention for corporations and government entities in Brazil. The Director determined that the Petitioner established eligibility as a member of the professions holding an advanced degree. The record shows that the Petitioner is an advanced degree professional.

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 while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further found that the Petitioner did not establish he is well positioned to advance the proposed endeavor under the second prong of Dhanasar, or that on balance, waiving the job offer requirement would benefit the United States under the third prong of Dhanasar. 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.[3]

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 consulting and services business in [redacted] Maryland for which he would be its chief executive officer and head of security. The Petitioner's business plan indicates that the business would provide its services to private companies and government organizations with its main services to include: private safety and security; tactical security operational management; logistics applied to security; physical security, threat, and risk assessments; crisis and security management; emergency response planning; compliance and corporate investigations; internal audits; developing, implementing, and monitoring electronic forensic teams;

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

unarmed guards; installation and monitoring of electronic security; antifraud training; safeguarding assets, employees, workplaces, and real estate for companies; and active shooter training. We agree with the Director that the Petitioner's endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the Petitioner did not establish that his proposed endeavor has the potential to have broader implications in his field or would have benefits to the regional or national economy as contemplated by Dhanasar. Therefore, the Director found that the Petitioner did not establish his burden in meeting the national importance element of the first prong of the Dhanasar framework.

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 and the shortage of professionals in his field. 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 relies on his professional knowledge and expertise to counter the Director's determination that the record does not sufficiently demonstrate the broader implications of his proposed endeavor. The Petitioner argues, "It's essential to recognize [the Petitioner's] proficiency in security, weapons, tactical strategy, training, strategic planning, and leadership holds immense potential to not only impact national security but also to contribute to global security advancements." He further stresses his more than 25 years of professional experience arguing, "[The Petitioner's] specialized knowledge has the potential to usher in innovative security practices, a crucial aspect in the efforts of U.S. companies, agencies, and organization to fortify against threats and ensure public safety."

However, the Petitioner's reliance on his professional experience and knowledge to establish the national importance of his proposed endeavor is misplaced. His professional experience and knowledge relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. 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. See id. at 889. 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 the field more broadly. Id. at 893. The record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of security management, 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 evidence does not suggest that the Petitioner's security consulting and services business would impact the security management field more broadly.

The Petitioner argues that his proposed endeavor has national importance based on the business' potential economic impact and job creation within the underserved business community of [redacted] Maryland, as outlined in the business plan. He claims, "This strategic decision is a testament to their dedication to fostering job creation and economic growth in an underserved area, fully aligning with the Dhanasar framework's requirement of significant potential to employ U.S. workers, especially in areas grappling with economic distress." (emphasis omitted). He further argues that his proposed endeavor has "the potential positive impact on the U.S. job market" based on evidence showing the need for professionals in his field. He claims that the business plan's financial projections show the business' potential revenue generation and "secondary economic effects" through "local spending and increased tax contributions," which "align with the benchmark of 'substantial positive economic effects'" set out in Dhanasar. (emphasis omitted).

The record includes the Petitioner's professional statement and a business plan which emphasize the business' potential economic benefits. The plan also claims additional potential benefits, including promotion of public safety, helping address the shortage of security professionals through the business' hiring of qualified staffed personnel, helping reduce crime rate in violent U.S. cities, and protection of personal property. With respect to the potential economic benefits, the business plan explains that its initial office will be in an underserved business community in [redacted] Maryland with plans to establish additional locations in underserved business communities in [redacted] and [redacted] Illinois. The business plan explains that the business would help the economic growth of these "economically distressed" cities by job creation and paying federal and local taxes. 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 and the generation of federal income taxes. The plan also includes the Petitioner's professional qualifications; the Petitioner's sole ownership of the business and his investment of $350,000 to start the business; a summary of the business' primary services and products; a brief summary of the business' mission, values, and goals; an analysis of the security services industry in the United States; 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 underserved business communities in Maryland, the District of Columbia, or Illinois, 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 underserved communities or the United States. The Petitioner's claims that his security consulting and services business will benefit the local 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 the local communities 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 chief executive officer and head of security 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 189 direct employees, generate 147 indirect jobs, and generate almost one million dollars 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 the underserved business communities and the United States. While the Petitioner expresses his desire to contribute to the United States and its underserved 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 economically underserved areas of Maryland, the District of Columbia, or Illinois. 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 189 direct jobs, generating 147 indirect jobs, and generating almost a million dollars in taxes over a five-year period rises to the level of national importance.

Through generation of jobs and business income, the Petitioner stresses on appeal the economic importance of immigrant entrepreneurs on the U.S. economy and on small businesses. 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 the record includes news articles relating to the importance of immigrant workers in the United States. We recognize the significant contributions to the United States from immigrants who have become successful entrepreneurs; however, merely working in the security management field or starting a security consulting and services 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 explanation of successful entrepreneurial businesses, and that the Petitioner would be of great value to U.S. organizations. He explains the importance of businesses having competent business development and sales professionals as a link between the businesses and their served markets. The reports and articles in the record mainly focus on the impact of the COVID-19 pandemic on the physical security job market; the benefits of pandemic response security guards, the importance of armed security, the history of security consultants and security guard careers, job responsibilities of security consultants, the demand for law enforcement, and a 2022 industry analysis of security services in the United States.

We recognize the importance of the security management industry and related careers; however, merely working in the security management field or starting a security consulting and services

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 Matter of Dhanasar, 26 I&N Dec. at 889. As stated earlier, the evidence does not suggest that the Petitioner's security management consulting business would impact the security field more broadly. 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] will work in an area of substantial merit and national importance." (emphasis omitted). The opinion describes the job responsibilities of security officers; the demand for security officers throughout the world; the importance of security services to economic growth by reduction of crime; and the prevalence and costs of gun violence. The opinion states that U.S. companies would benefit from the Petitioner's expertise and knowledge in public and private security. Instead of focusing on the Petitioner's specific proposed endeavor having a prospective impact in the security management field, the opinion focuses on the importance of the security management industry and how the Petitioner's experience would be beneficial to U.S. companies. The opinion also lacks relevance since it does not address the Petitioner's proposed endeavor of establishing a security consulting and services business. 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). Stating that the Petitioner's professional experience would support an important industry is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The Petitioner does not demonstrate that his proposed endeavor has the potential to extend beyond his 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 consulting and services business offers original 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 consulting and services 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.