U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37487759

Date: MAR. 20, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a trade marketing and ecommerce consultant and business executive, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional or a person of exceptional ability, as well as a discretionary national interest waiver of the job offer requirement attached to this classification. 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 although the Petitioner qualifies for the EB-2 classification as an advanced degree professional, the record did not establish that a waiver of the required job offer, and thus labor certification, would be in the national interest. This matter is now before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner bears the burden of establishing his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

I. LAW

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant 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, which states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts in holding that USCIS' decision on a national interest waiver is discretionary in nature).

II. ANALYSIS

The Director found, and the record (including evidence of the Petitioner's bachelor of science degree and master of business administration (MBA) degree, college transcripts, and academic evaluations) indicates that he qualifies for the underlying EB-2 classification as an advanced degree professional holding a U.S.-equivalent master's degree. 8 C.F.R. §§ 204.5(k)(1)-(2), (k)(3)(i)(A).

The remaining issue on appeal is whether he warrants a discretionary national interest waiver under the *Dhanasar* framework and its requisite three prongs, any one of which is dispositive. Under this framework, the first prong, "substantial merit" and "national importance," focuses on the specific endeavor the Petitioner 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; and in assessing whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*[2]

The Director concluded that although the Petitioner is well-positioned to advance his proposed endeavor, the evidence did not show that it has national importance and therefore he did not meet *Dhanasar*'s first prong.[3] On appeal, the Petitioner alleges that the Director did not correctly apply the *Dhanasar* framework and failed to properly consider all relevant evidence. The Petitioner also reasserts his eligibility for a national interest waiver, but does not submit any new evidence on appeal. We conclude that the record does not establish that the proposed endeavor has national importance.

The Petitioner intends to work as a chief executive of his own company providing consulting services in trade marketing and ecommerce primarily to small and growing businesses in the United States.

Although the Petitioner's proposed endeavor has merit, the evidence does not establish that it would have significant potential to employ U.S. workers, have substantial positive economic impact in this country, broadly impact the industry on national or global level beyond his company and potential customers, or otherwise have broader economic or societal implications rising to the level of national importance. *Id*. at 889-890.

In reiterating the claimed national importance of his proposed endeavor, the Petitioner relies on his academic background and past experience as a sales professional (with a focus in trade marketing and commerce and a deep understanding of market dynamics, trends, and consumer behavior) as indicated in his resume, briefs, recommendation letters, an expert letter, and two letters of intent to engage in his proposed business, as well as general industry reports and articles on the significance of the industry and small and medium sized businesses. He further reiterates that, given his background, expertise, and urgent demand for qualified individuals in the industry, which has also been identified as a critical field by government agencies and other entities, his proposed endeavor will have substantial positive economic and societal impact. However, the referenced evidence and assertions focus on his skills and profession relevant to *Dhanasar*'s second prong and whether he is well

[2] The Director found (in a request for evidence) and we agree that the Petitioner's proposed endeavor has substantial merit. But the Director's denial states that the Petitioner has not demonstrated that his proposed endeavor has substantial merit. If this inconsistent determination was not a typographical error, we disagree, withdraw it, and conclude otherwise.

[3] The Director also determined that the evidence did not satisfy *Dhanasar*'s third prong.

positioned for his endeavor, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec at 890.

For assessing the national importance of a proposed endeavor under *Dhanasar*'s first prong, we consider and look for evidence of the endeavor's "potential prospective impact" and evaluate whether the specific endeavor the Petitioner proposes to undertake has broader national significance, rather than the importance of his profession or industry in which he proposes to engage. *Id.* at 889. Here, as chief executive of his own company, he intends to provide marketing and ecommerce consulting services to growing U.S. businesses. He also claims that his specialized, tailored services will optimize trade marketing strategies for his clients, enrich social and cultural welfare by supporting small to medium sized businesses, and foster innovation and competitiveness, which also align with and promote national initiatives for innovation and economic growth. However, the Petitioner does not claim, and the record does not contain any probative evidence, that he himself has developed or will develop any novel or innovative business strategies or solutions that will broadly impact the industry. The record also does not contain evidence that his claimed marketing and ecommerce methods were or would be adopted by the industry or otherwise have far-reaching implications. Although we acknowledge that the proposed endeavor could have a positive impact on his career, the Petitioner has not persuasively explained, and the record (primarily including his resume, counsel's assertions, support letters, and the general industry reports and articles) does not demonstrate how his proposed endeavor to work as a trade marketing and ecommerce consultant would have the national or global implications for the U.S. industry as he claims, beyond his own company and future clients.

The record, for instance, does not show that the proposed endeavor would have "significant potential to employ U.S. workers" or "substantial positive economic effects, particularly in an economically depressed area," which *may* indicate national importance. *Id.* at 890. The Petitioner's business plan includes a five-year plan initially listing him as CEO and the only employee; and by year five, eleven employees, including two managers, four administrative staff, and four consulting staff. It further forecasts that by the fifth year, the company will have a total revenue of $2.5 million and net profit of about $1.8 million, after expenses. But these figures, which he claims represent potentially significant economic growth and impact, lack corroborating evidence that would objectively substantiate them. Further, while the business plan also includes organizational objectives and general titles for the stated future employees, the record (including his business plan, aspirational assertions, support and expert letters, and industry reports) does not contain any evidence-based justifications for the hiring projections and the claimed need for operation expansion. The record also does not indicate whether or how any of his proposed consulting services would actually help an economically depressed area. Even assuming the accuracy of the financial and staffing projections, the evidence also does not show how a small company located in [redacted] Tennessee, with his stated business activities and earnings, indicates national economic significance, even if it were to utilize remote online services, as he claims.

The record also includes letters from individuals indicating a willingness to invest in and obtain consulting services from the Petitioner. However, they lack detail as to how such statement of intent would generate actual economic impact and do not speak to the specific proposed endeavor or how it has broader implications beyond his own company. The letter writers also only state their general intent without any specific transactional or contractual terms that would be binding. The remaining recommendation and expert letters lack assertions based on independent evidence specifically relevant to the claimed national significance of the proposed endeavor, and as stated, they primarily address

whether the Petitioner is well-positioned to advance his proposed work.[4] Although he also notes that his proposed endeavor will further indirectly impact the economy through activities of various other enterprises that engage in business with his company, the record does not support this claim or otherwise show the stated indirect impact would be directly attributable to his proposed work. Further, contrary to the Petitioner's appeal assertions, the industry reports and articles provide general information on the importance of the industry and small to medium sized businesses, rather than relate specifically to his proposed work, and do not objectively substantiate its claimed national importance. The record thus does not establish that the proposed endeavor has significant potential to employ U.S. workers or will have substantial positive economic effects that may indicate national importance. Although he further generally asserts that his proposed endeavor also will have other positive cultural and societal effects, he does not specify this claim or otherwise support it with probative evidence.

The Petitioner nonetheless continues to rely on his expertise in and the importance of the trade marketing and ecommerce solutions industry. But, as explained, the importance of a proposed endeavor is determined by its specific potential prospective impact, not by the occupation or industry, in which he proposes to engage based on his qualifications. *Dhanasar*, 26 I&N Dec at 889-890. The purpose of the national interest waiver thus is not to facilitate personal business goals or for exploring employment possibilities where there may be related opportunities. Anyone seeking this waiver must establish that "the specific endeavor" they propose to undertake has national importance. *Id.*

While we recognize his desire to contribute to the U.S. marketing and commerce industry and its economy, he has not established with specific, probative evidence that his proposed endeavor will have broader implications in his field, have significant potential to employ U.S. workers, or have other substantial positive economic or societal effects. *See Matter of Chawathe,* 25 I&N Dec. at 375-76 (holding that in reviewing the record we consider not only the quantity, but also the quality, including relevance and probative value, of the evidence). The Petitioner thus has not demonstrated that his proposed endeavor has broader national importance as contemplated by the *Dhanasar* framework.

As the identified ground for denial, the Petitioner's inability to meet *Dhanasar*'s first prong, is dispositive of this appeal, we decline to reach his remaining arguments as to *Dhanasar*'s third prong. *See, e.g.*, *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to reach issues that are unnecessary to the ultimate decision).[5]

ORDER: The appeal is dismissed.

[4] The Petitioner's appeal brief refers to multiple "expert letters." But the record contains only one expert opinion letter.
[5] We also do not address here whether the evidence sufficiently supports the Director's determination that the Petitioner has demonstrated he is well-positioned to advance his proposed endeavor.