U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30185500

Date: MAR. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the physical fitness industry, 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 is eligible for a national interest waiver as a matter of discretion. 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 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

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

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:

- 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

A. EB-2 Classification

The Director concluded that the Petitioner does not qualify for the EB-2 classification as an advanced degree individual. However, as the record does not establish by a preponderance of the evidence that the Petitioner is eligible for a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.[2]

B. National Interest Waiver

1. Substantial Merit

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar* at 889. The Petitioner's proposed endeavor is to open a physical fitness company that will provide physical cross training for circus artists and students, physical personal training, multiple martial arts training, and provide a bodybuilding monthly subscription. As the statement in the record further explains, the Petitioner will serve as the company's founder, athletic trainer, and performer. The record contains industry articles and reports on the federal government efforts in increasing physical activity and promoting youth sports, the importance of immigrants and entrepreneurialism, and small businesses. In addition, the Petitioner states his intention is that his work will, "[c]ontribute to access to innovation, new business practices, economic prosperity, and overall enhanced society welfare; it will also generate American jobs, increase national and international integration and productivity, and enhance revenue for the U.S. economy at large." We conclude that the Petitioner's proposed endeavor has substantial merit.

[1] *See 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 is discretionary in nature).

[2] *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); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

2. National Importance

The Petitioner contends on appeal that the Director did not apply the proper standard of proof, instead imposing a stricter standard, and erroneously applying the law. He asserts the Director did not give "due regard" to the evidence submitted, specifically: the resume outlining his experience; the business plan describing his professional credentials, expertise, and accomplishments; evidence of his work in the field; letters of recommendation; and industry reports and articles showing the national importance of the proposed endeavor and the shortage of professionals in the field. Upon de novo review, we conclude that the Director properly analyzed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence and the Petitioner did not demonstrate that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar* at 889. The Petitioner states that his proposed endeavor will contribute to the U.S. economy through job creation and economic impact. The business plan states that the Petitioner plans to employ 16 people in the first year of operation and will increase to 54 people by the fifth year of operation. These calculations were done using industry standards and the record does not show how his specific endeavor will create these jobs. *Dhanasar* states the proposed endeavor may show national importance by having a "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." *Id* at 890. The record does not show how these jobs will be created by the Petitioner's proposed endeavor and the staffing levels themselves are not substantial enough to rise to the level of national importance. In addition, the record does not show how his proposed endeavor will have substantial positive economic effects that would rise to the level of being nationally important.

The Petitioner states that he plans to expand his business to serve "[a]ll the American territory and abroad." The business plan shows the endeavor will start with one location in Florida and then will add a second location in Florida, and an additional location in Nevada. *Dhanasar* states, "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." 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. Although the record shows the Petitioner intends to expand his business to multiple locations, the record does not establish the proposed endeavor will benefit more than the direct clients it will serve or that the Petitioner's business would impact the physical fitness field more broadly.

The Petitioner claims his proposed endeavor can boost local economies, support small businesses, and create opportunities for local communities. In addition, he says his proposed endeavor holds social, artistic, and economic significance; that his endeavor contributes to the entertainment landscape and can contribute to the exchange of cultures, ideas, and experiences. While this is meritorious, the Petitioner has not provided corroborating evidence to support these claims of his business' substantial economic and social benefits to the United States. The Petitioner's claims, that his company will benefit the U.S. economy and enhance societal welfare, 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 these benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. *Chawathe*, 25 I&N Dec. at 376.

On appeal, the Petitioner contends the wide range of roles he has performed in the industry and the reports and articles in the record show his endeavor's national importance. Past experience is applicable to prong two analysis, on whether the Petitioner is well positioned to advance the endeavor but is not proof of national importance. In addition, the industry reports and articles on the importance of physical activity, immigrants and entrepreneurship, and the importance of small businesses are helpful for background information and in a substantial merit claim as discussed above, however, they also do not show national importance. It is the importance of the specific endeavor we must analyze and not the industry itself. Lastly the appeal spends some time discussing the importance of business development professionals which does not connect to this petitioner's proposed endeavor as business development professionals are not included anywhere else in the record.

Finally, the record contains an expert opinion letter that reiterates many of the same arguments the Petitioner makes that have been addressed above in regard to the proposed endeavor, the economic possibilities, its impact on society, and his past experience in the field of physical fitness. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.