U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37443196

Date: MAR. 25, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources 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).

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish 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 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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 a 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

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal 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. At the outset, we note that the Director did not provide a thorough analysis on whether the Petitioner was well positioned to advance his endeavor but nonetheless determined that the Petitioner was well positioned and that the proposed endeavor had substantial merit.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

According to the cover letter provided with the initial filing, the Petitioner intended to continue working as the owner and CEO o[redacted]. The Petitioner explained that [redacted] is a human resources and management business enhancing sustainable and ethical labor practices in small and midsize enterprises (SMEs) and driving economic growth and social equity through supportive practices and the implementation of effective training programs. The Petitioner did not submit a personal statement or business plan; and the cover letter did not provide details about the Petitioner's specific proposed endeavor; did not indicate what specific services he would offer; how the services he offered would create jobs and revenue through the specific endeavor and what prospective entities he would work with. Consequently, the Director determined, in part, that the Petitioner's initial filing did not demonstrate the proposed endeavor's national importance and issued a request for evidence.

In response, the Petitioner submitted additional documentation, including a business plan titled "professional plan," expert opinion letter and letters of support. In the professional plan, the Petitioner indicated that it was his intention to establish [redacted] to provide human resources and business management services to SMEs in the United States and to drive economic growth and social equity through supportive policies and the implementation of effective training programs. The professional plan included industry and market analysis, 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. However, the Petitioner did not provide any information about why he intended to establish a new business and what would become of [redacted]

In denying the petition, the Director concluded that although the Petitioner's proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate that the prospective impact of his endeavor rises to the level of national importance. In addition, the evidence did not show that the benefits of the Petitioner's endeavor would extend beyond future clients. The Director observed

that the Petitioner did not provide evidence that the area where he intended to operate the company was economically depressed or that the specific proposed endeavor had the potential to employ U.S. workers or otherwise offer "substantial positive economic effects" as contemplated by *Dhanasar*. The Director explained that the Petitioner simply described the typical occupational duties of a human resources business rather than establishing that the specific proposed endeavor has national importance. Moreover, the Petitioner did not sufficiently show how the scope of the products or services he intended to provide extended "beyond the immediate vicinity of the persons or entities utilizing them."

Regarding the letters of support, the Director determined that not only did they focus on the Petitioner's background and qualifications which are considerations under *Dhanasar's* second prong, which shifts the focus from the proposed endeavor to the foreign national, but the letters did not meaningfully discuss the Petitioner's proposed endeavor or provide any insight into how the proposed endeavor will have broad implications. Similarly, the Director found the expert opinion letter from the university professor discussed the Petitioner's background and indicated that the Petitioner intended to "provide proficient and efficient solutions in human talent planning, problem-solving, work environment design, employee recruitment, and productivity management," and that the Petitioner "aims to enhance organizational efficiency and reduce costs by utilizing his skills in hiring subcontractors and optimizing project planning." However, the expert did not provide any meaningful details about the Petitioner's own specific proposed endeavor or whether the proposed endeavor would have broad implications. We note that USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought.

On appeal, the Petitioner argues that his case closely mirrors the principles established in *Dhanasar*. He claims that in *Dhanasar*, the petitioner worked to address national defense while he works to address the economy, and both are critical national issues that transcend local or regional impact. He further argues that the Director applied a narrower interpretation of national importance thus undervaluing his contributions to the needs of the SME sector. The Petitioner argues that his proposed endeavor satisfies the national importance requirement for several reasons. He outlines how his endeavor will fuel entrepreneurship and innovation among SMEs by empowering them with strategic HR solutions thereby driving economic growth and job creation; and he proffers that although his immediate work may be concentrated in Florida, his advanced sustainable and ethical labor practices, education, and human resources strategies will impact SMEs across the country. Additionally, the Petitioner states that his proposed endeavor will build a stronger workforce, promote diversity and inclusion, enhance employee well-being, and empower local economies.

Upon review of the record, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate whether he had demonstrated, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework. 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 specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and 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. Although the Petitioner discusses the value and importance of human resources services and its impact on the U.S. economy and society, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession. *Id.* at 889.

The record in its totality does not show through supporting documentation how the Petitioner's specific services stand to sufficiently extend beyond his prospective clients to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. For example, the many letters the Petitioner submitted discussed the Petitioner's particular services to each respective client. However, the letters did not show the broader impact of the Petitioner's work, rather they were limited to his specific clients, who employ him for his services. Moreover, the letters covered the Petitioner's prior work and accomplishments and relate more to the second prong rather than the first prong of the *Dhanasar* framework. *Id.* at 890. As mentioned, the Director determined that the Petitioner met the second prong of the *Dhanasar* framework.

While the Petitioner provided a professional plan for [redacted] the Petitioner did not demonstrate how the professional plan's claimed revenue and employment projections, even if credible or plausible, would have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation, nor did he establish the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, even though the professional plan includes the job descriptions for CEO, HR Analyst, Talent Acquisition Specialist, Performance Management Consultant, Employee Development Trainer, Employee Engagement Specialist, Compliance Officer, among others, and listed the job titles of other potential employees, the profit and loss statement claiming $162,907 in salaries and benefits in Year 5 does not demonstrate that future staffing levels would provide substantial economic benefits to Florida or the U.S. economy more broadly at a level commensurate with national importance. Moreover, the Petitioner did not establish that such employment projections would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. The professional plan further indicates that [redacted] will contribute directly to the U.S. economy through job creation; and by expanding its operations and services, it will regularly add new roles withing the company. However, this claim is incongruent with the Year 5 salary and benefits figures. For all these reasons, the record does not demonstrate that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Further analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make findings on issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.