U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30147101

Date: MAR. 28, 2024

Appeal of California Service Center Decision

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

The Petitioner is a managing consultant for nonprofit organizations. He seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business, 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 determined that despite qualifying for the underlying EB-2 visa classification as an individual holding an advanced degree,[1] 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 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.[2] 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.*

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[1] Although the Petitioner claimed that he qualifies for the EB-2 visa classification as an individual of exceptional ability, we need not address that claim, as the record contains evidence showing that the Petitioner was awarded a law degree in 2009 by [redacted] and a Master of Education degree in 2019 by [redacted] and therefore qualifies for the EB-2 visa classification as an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(3)(i).

[2] 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.

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." 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[3], 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

In the initial supporting statement, the Petitioner discussed his education and highlighted his experience in Colombia where he worked as a consultant in the nonprofit sector, focusing on humanitarian projects that involved assisting "the underprivileged in the education and housing fields." Based on his academic credentials and subsequent work experience, the Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree. The Petitioner stated he similarly seeks to work as a consultant in the nonprofit arena as his proposed endeavor in the United States. The Petitioner further stated that his goal in working in the nonprofit arena is "to create humanitarian projects that would help underrepresented populations, homelessness, and income inequality."[4]

Applying the three-prong analytical framework described above, the Director concluded, and we agree, that although the Petitioner's proposed endeavor has substantial merit, the Petitioner did not establish that his endeavor has national importance. The Director also concluded that the Petitioner did not establish 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.

In the matter at hand, we will discuss the Director's adverse determination regarding the national importance element of *Dhanasar's* first prong. 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.

In addressing the national importance element of his claim, the Petitioner provided letters of interest from two non-profit organizations [redacted] who seek the Petitioner's consulting services. The Petitioner

[3] *See also 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 are discretionary in nature).

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

explained that he would provide these services through his company, [redacted] noting that he intends to work with the two listed entities in the first five years of his company's operation.[5] The Petitioner broadly referenced "social projects" as the subject of his consulting work, stating that his objective is to help non-profit client organizations define "the baseline needs of the target population" in the projects they choose to pursue. In other words, while the Petitioner intends to work with two specific non-profit organizations during his company's initial five years of operation, his endeavor will not focus on a particular organization, project, or region. Rather, the Petitioner indicates that he will target "as many non-profit organizations operating in different regions of the United States [] as possible."

The Petitioner also provided a business plan, which mentions the above listed non-profit organizations and broadly refers to the Petitioner's plans to help these organizations "develop training programs to obtain employment and housing for the Hispanic population in the United States." The business plan also projects the endeavor's "staggered growth," but it does not include a more precise estimate or timeline for the projected growth, nor does it identify specific projects the Petitioner will be assigned to or offer empirical data forecasting the impact of the Petitioner's work on the target population. As such, the Petitioner has not demonstrated that the potential prospective impact of his work would be on a broad enough scale as to result in "national or even global implications" for the targeted population. *Id.* at 889.

The business plan also includes general data about the "nonprofit sector," such as labor statistics which show that non-profit organizations collectively employ approximately 10% of the U.S. private work force. However, as previously stated, in determining the national importance of an endeavor, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* Thus, general labor statistics about the non-profit sector are not relevant for the purpose of establishing the national importance of the Petitioner's specific endeavor. Here, the business plan states that the Petitioner seeks to hire seven employees "to meet the needs of the new non-profit organizations" with locations in "different regions" throughout the United States. However, the record lacks projections as to the number of regions or projects the Petitioner will target, nor does the hiring plan indicate that the Petitioner's endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects" that are commensurate with having national importance. *Id.* at 890.

As noted earlier, despite finding that the Petitioner's endeavor has substantial merit, the Director determined that the Petitioner did not demonstrate that his endeavor has national importance. The Director noted that the Petitioner provided an expert opinion letter that discussed government labor statistics but did not explain the correlation between those statistics and the proposed endeavor's potential to employ U.S. workers or offer other substantial positive economic effects. The Director also found that the Petitioner's business plan lacked specific information about the number and types of jobs the endeavor would create and did not adequately explain how the endeavor would operate to create jobs and generate revenue on a "large scale." And despite finding that the industry and government reports the Petitioner submitted offer "useful background information," the Director concluded that the reports have limited evidentiary value since they do not address the Petitioner's specific endeavor. Ultimately, the Director acknowledged the importance of the non-profit sector but

[5] The record shows that the Petitioner's company was formed on May 1, 2023, and thus it did not yet exist on December 9, 2022, when this petition was filed.

concluded that the Petitioner has not established that his work would produce an impact at the level of national importance.

On appeal, the Petitioner claims that his endeavor will "impact economically depressed areas and broadly enhance societal welfare," asserting that his "broad based expertise in economically underdeveloped nations" would benefit the non-profit organizations that use his services and allow them to take on more projects and create more full-time jobs.[6] However, as we discussed earlier, the Petitioner did not provide specific information about his endeavor, such as specific projects he would pursue or the projected impact of his work on the target population. And as correctly noted in the Director's decision, the Petitioner has not provided specific information about the number and types of jobs his endeavor would create. Thus, the record lacks sufficient evidence to support the Petitioner's assertions on appeal. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In sum, although the Petitioner claims that the impact of his endeavor to work as a consultant for non-profit organizations would broadly impact "a wide network of these organization," he has not adequately supported this claim with reliable information about specific projects his endeavor will pursue or the impact of those unspecified projects on the target population. Despite the substantial merit of the Petitioner's proposed endeavor, the record does not establish by a preponderance of the evidence that the endeavor meets the first prong of the *Dhanasar* framework related to national importance. Accordingly, we conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

Lastly, we note that because 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 the Director's adverse conclusion on the third *Dhanasar* prong. *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).

ORDER: The appeal is dismissed.

[6] Although the Petitioner checked box 1.b on the appeal Form I-290B, Notice of Appeal or Motion, thus indicating that he intended to submit a brief and/or additional evidence within 30 days of filing the appeal, the record does not reflect submissions beyond the appeal form and corresponding statement titled "I-290B Addendum (Basis for Appeal)," which were submitted simultaneously when the appeal was filed.