U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30371554

Date: MAR. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks classification as either an advanced degree professional or an individual of exceptional ability. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. 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, concluding that the record did not establish that the Petitioner qualifies for the EB-2 classification or that a waiver of the job offer requirement is 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.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either an advanced degree professional or an individual of exceptional ability, 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 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 a matter of discretion,[1] grant a national interest waiver if the

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and the Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

petitioner demonstrates that: 1) the proposed endeavor has both substantial merit and national importance; 2) the individual is well-positioned to advance their proposed endeavor; and 3) on balance, waiving the job offer requirement would benefit the United States.

The Director determined that the Petitioner did not establish eligibility for the underlying EB-2 classification as either an individual of exceptional ability or an advanced degree professional. Regarding the Petitioner's request for a national interest waiver, the Director found that the Petitioner demonstrated the substantial merit of the proposed endeavor and that he is well-positioned to advance it, but that the Petitioner did not demonstrate the endeavor's national importance or that, on balance, waiving the job offer requirement would benefit the United States. On appeal, the Petitioner asserts that he qualifies as an individual of exceptional ability and that he has established his eligibility for a national interest waiver under each of the three *Dhanasar* prongs. Because, as we discuss below, we conclude that the Petitioner has not demonstrated the national importance of the proposed endeavor, we need not reach the question of whether he qualifies for the EB-2 classification or the second or third prongs of the *Dhanasar* framework and we reserve our opinion regarding those issues. *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). The Petitioner's proposed endeavor is to establish and operate a boat building business in [redacted] Florida. The business will build boats and offer workshops for training in boat building.

In determining that the Petitioner did not establish the national importance of the proposed endeavor, the Director noted that, in determining national importance, USCIS focuses on the specific endeavor that the individual proposes to undertake, rather than the importance of the field, industry, or profession. The Director concluded that the evidence, such as the business plan, letters of recommendation, evidence of the Petitioner's work experience, and news articles on immigration, small businesses, and recovery from the COVID-19 pandemic, did not demonstrate that the Petitioner's business venture has the potential to flourish and improve the economy nationally or in the [redacted] region. The Director also concluded that the claims made in the recommendation letters and expert letter were stated without sufficient support, noting for example the claim in the expert letter that "[m]any people participate in recreational boating activities" and therefore "the proposed endeavor will broadly enhance societal welfare or cultural enrichment." The Director also found that the business plan's projected jobs and potential revenue, including the claimed indirect jobs, did not establish the proposed endeavor's potential for a significant impact on the economy. Overall, the Director concluded that the Petitioner's assertions on improving the national economy, improving supply chain issues, and supporting recovery from the COVID-19 pandemic were not supported by the record.

On appeal, the Petitioner submits a brief in which he primarily restates the claims made before the Director regarding the national importance of the proposed endeavor. Indeed, the Petitioner's appeal brief is substantially like the brief submitted in response to the Director's request for evidence (RFE). In the brief, the Petitioner asserts that the community in which the business will operate is economically depressed and there is, therefore, an "urgent need for initiatives" such as the proposed endeavor. The Petitioner also claims that small businesses are important to the U.S. economy, that the proposed endeavor will employ U.S. workers, will create additional indirect jobs, and will contribute to the economy overall by providing tax revenue, contributing to the supply chain, and through "knowledge transfer" by offering boat building workshops.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Upon review, we agree with the Director that the record does not establish the proposed endeavor's national importance. As stated by the Director, in determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* Nevertheless, on appeal, the Petitioner continues to emphasize the general importance of small businesses, tax revenue, job creation, knowledge transfer, and the economic supply chain as demonstrating the proposed endeavor's national importance. The Petitioner's assertions do not overcome the findings by the Director, nor do they establish any specific legal or factual error in the Director's finding that the Petitioner did not establish national importance.

The Petitioner describes general economic and business concepts such as a "triple bottom line," tax collection, direct and indirect job creation, and supply chain "linkages." However, the evidence does not demonstrate that the Petitioner's specific proposed endeavor of establishing a boat building business and offering workshops will create jobs, pay tax revenue, or otherwise contribute to the economy on a scale commensurate with national importance. The Petitioner does not explain how the endeavor's potential economic impacts, such as contributing tax revenue and creating indirect jobs, would result in any demonstrable effect on the regional economy, even in an economically depressed area, or that they would be distinct from any other small business operating in the United States. The Petitioner also has not demonstrated that his business's services will differ from those already available on the market, offer improvements or advancements that are replicable through the field, or otherwise would stand to broadly impact the boat building industry or the U.S. economy beyond those clients directly served.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to his qualification as an individual of exceptional ability and the third *Dhanasar* prong but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prongs or his eligibility for the EB-2 classification. *See INS v. Bagamasbad*, 429 U.S. at 25 (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 alternative issues on appeal where the applicant is otherwise ineligible).

ORDER: The appeal is dismissed.