U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30978398

Date: MAY 6, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of sales and marketing, 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.[1] 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 a waiver of the classification's job offer requirement, 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 because the Petitioner did not establish that his proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the Dhanasar framework. See Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). Because this 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 remaining Dhanasar prongs.[2]

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. Next, a petitioner 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. at 889, provides the

[1] We note that the Texas Service Center approved Petitioner's Form I-140 Petition (receipt [redacted]) for an alien of extraordinary ability as a general and operations manager on March 11, 2024.

[2] 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).

framework for adjudicating national interest waiver petitions. Dhanasar states that U.S. Citizenship and Immigration Services (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

The Director determined that the Petitioner was a member of the professions holding an advanced degree.[4] The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the Dhanasar framework.

The Petitioner, an entrepreneur in the field of sales and marketing, states that he has more 25 years of experience in the field. He plans to put that experience to use in developing a marketing consulting firm that he has established in Florida. This company "will offer a one-stop-shop platform that will link donors and causes and help organizations in their marketing and fundraising strategies." The Petitioner posits that his company will "target the nonprofit industry" and provide "an entire marketplace for nonprofit organizations that do not have e-commerce platforms established."

With the initial filing the Petitioner submitted evidence of his education and experience, a "definitive statement" describing his proposed endeavor and claimed eligibility for a national interest waiver, a letter from counsel, a business plan, an expert opinion letter, recommendation letters, and industry reports and articles.

Following initial review, the Directed issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Petitioner's response to the RFE includes a letter from counsel, a properly signed Form I-140, and the resubmission of evidence already in the record.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had demonstrated that his proposed endeavor has substantial merit and that he is well-positioned to advance his endeavor. However, the Director concluded that the Petitioner had not demonstrated that his proposed endeavor had national importance, or that on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Director determined that the record did not demonstrate the proposed endeavor's importance on a national level

[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 to be discretionary in nature).

[4] The record is unclear on whether the Petitioner has demonstrated that they have a foreign equivalent degree to a United States baccalaureate and as to whether the Petitioner has at least five years of progressive post-baccalaureate experience in the specialty. See 8 C.F.R. § 204.5(k)(3)(i)(B) (emphasis added). We note that we have previously determined that the Petitioner had not put forward sufficient evidence to demonstrate his eligibility for advanced degree classification in the dismissal of another Form I-140 Petition appeal. See In Re: 26929447 (AAO July 18, 2023). As we need not reach a decision on whether the Petitioner is eligible for EB-2 classification as we decide this case on another basis, we reserve this issue.

or that the endeavor's benefits would extend beyond the Petitioner's company, employer, or clients. Further, the Director determined that the Petitioner did not demonstrate that the proposed endeavor has significant potential to employ U.S. workers or that it otherwise offers substantial positive economic effects for the United States. Finally, the Director determined that the Petitioner did not demonstrate that his proposed endeavor would broadly enhance societal welfare or cultural and artistic enrichment.

On appeal, the Petitioner submits a brief and asserts that the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." Further, the Petitioner argues that the Director did not give "due regard" to the Petitioner's resume, business plan, definitive statement, his "work in the field," letters of recommendation, or the submitted industry reports and articles.

As to the Petitioner's contention that the Director imposed "novel substantive and evidentiary requirements." We disagree. Although the evidentiary standard in immigration proceedings is the preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. Matter of Y-B-, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); also see the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). The Director correctly states that the Petitioner must demonstrate that he is eligible for a national interest waiver by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76. Notwithstanding citation to a range of cases, the Petitioner does not analyze how the Director failed to properly consider the evidence in the record. Additionally, the Petitioner points to his resume and his "work in the field" that go to the second prong of Dhanasar analytical framework which the Director determined the Petitioner had established. The articles and industry reports that the Petitioner references are general and do not discuss his proposed endeavor. Therefore, we conclude this argument is without merit.

Regarding the national importance component of *Dhanasar's* first prong, we consider the proposed endeavor's potential prospective impact in determining whether it has national importance. Matter of Dhanasar, 26 I&N Dec. at 889. 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." See Id. In Dhanasar, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. We also stated 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.

The Director noted in the denial that the Petitioner submitted the following evidence initially: a letter from counsel, a self-composed letter, an expert opinion letter, a curriculum vitae, a business plan, employment and recommendation letters, and information about the Petitioner's background, the field, and occupations. Next, the Director noted that the Petitioner had submitted the following evidence in response to the RFE: a statement from counsel, a personal statement, a resume, a professional plan, reference letters, and articles relating to the field of endeavor. While the Director may not have specifically discussed each piece of evidence in the record, the Petitioner does not show how any

alleged unexamined evidence affected the Director's decision. Therefore, we disagree with the Petitioner's contention that the Director did not give "due regard" to evidence in the record.

The Petitioner contends that his proposed endeavor as an entrepreneur in the field of sales and marketing is "national in scope as his professional activities relate to matter of national importance and impact." Further, the Petitioner states that his endeavor will "generate substantial ripple effects upon key commercial and business activities on behalf of the United States." The Petitioner posits that his company will generate "employment for approximately 42 Americans by Year 5, generating a total payment of wages of $7,158,725." However, the income and personnel projections provided in his brief on appeal and in his definitive statement are insufficient to demonstrate the potential for substantial positive economic impact that would broadly impact the nation as they are based on unsubstantiated assumptions. Further, the business plan shows contradictory numbers to those mentioned in the brief. For instance, the business plan projects that total payroll expenditures in year 5 will be $2,260,650. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). As the Petitioner has put forth inconsistent evidence to support his assertion, we can give credit to neither.

The Petitioner states that his company "will be established in [redacted] FL, in a Qualified HUBZone area." He asserts that that establishment will "help to fuel small businesses' growth in historically underutilized business zones." Additionally, the Petitioner states that his company will make an impact by "generating jobs for U.S. workers in these underutilized areas, improving the wages and the working conditions, and helping the local community bring investments to the region." However, there is no evidence that the Petitioner will be participating in the Small Business Administration's HUBZone program. And, while the Petitioner states that his company will be established in [redacted] the articles of incorporation submitted indicate an address in [redacted] Florida, which is not located in a HUBZone. Last, the Petitioner has not provided evidence to demonstrate that the proposed endeavor would have substantial positive economic effects.

Professor [redacted] provided an expert opinion letter on behalf of the Petitioner.[5] We acknowledge that the expert opinion letter includes an asserted analysis of the national importance of the Petitioner's proposed endeavor. After introducing the Brazilian media market, Professor [redacted] relates that the Petitioner "has an outstanding reputation in business, communications and the creation of projects in Corporate Media and Entertainment industry." He further states that "[b]ased upon [the Petitioner's] experiences, he will be able to utilize his skills and knowledge to work in the Media and Entertainment Business, making contributions of major significance to The Arts and M&E Industry." The Petitioner does not mention this line of work in his proposed endeavor. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec.

[5] We note that Petitioner's expert opinion letter includes a signature page signed by [redacted] and another signature page signed by [redacted] Both signature pages are on [redacted] letterhead. Review of the Petitioner's education evaluation shows that [redacted] provided a signature page for the evaluation. The signatures for [redacted] match while he does not seem affiliated with the [redacted] As it is unclear why two signature pages with different authors were provided for the expert opinion letter, we give the document less weight in our determination of the proposed endeavor's national importance. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. Id. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. Id.

Even if we gave the expert opinion full weight, which we do not, we conclude that it is of little probative value as the opinion does not meaningfully address the details of the Petitioner's proposed endeavor and why it would have national importance. Professor [redacted] does not explain how the Petitioner's proposed endeavor will have substantial rather than marginal effects on the U.S. economy. While it may be true that data released by the U.S. Bureau of Economic Analysis and the National Endowment for the Arts indicates that "the arts contribute $763.6 billion to the U.S. economy," Professor [redacted] does not demonstrate how the Petitioner's proposed endeavor will specifically be a significant, nationally important, part of that amount. Finally, we note that Professor [redacted] states that "as a Producer…there is no doubt that [the Petitioner] would work in the United States in an area of…national importance." Again, the Petitioner states that he is an entrepreneur in the field of sales and marketing. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. Id.; see also Matter of O-M-O-, 28 I&N Dec. 191, 197 (BIA 2021) ("by submitting fabricated evidence, the appellant compromised the integrity of his entire claim") (cleaned up). Inasmuch as the Petitioner has provided an inconsistent account of his proposed endeavor, we are unable to determine that value of the expert opinion letter to corroborating his endeavor.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the Dhanasar framework, he is not eligible for a national interest waiver and further discussion of the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the remaining Dhanasar prongs. See INS v. Bagamasbad, 429 U.S. at 25.

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in the Dhanasar analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.