U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30727889

Date: MAY 7, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the trucking industry, 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, 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 Nebraska Service Center denied the petition, concluding that although the Petitioner qualified as an advanced degree professional, he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] The matter is now before us on appeal. 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.

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 USCIS may, as matter of discretion,[2] 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] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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).

[2] *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).

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

The Petitioner proposes to establish a trucking business in Ohio. The Petitioner states that his "business endeavor is to enhance the overall standard of trucking services in the United States by ensuring that all freight is safely stored and transported in a way that preserves its quality." The Petitioner indicated that he intended to expand his business across the United States and Canada.

The Director determined that the Petitioner's proposed endeavor was of substantial merit, and we agree. However, the Director concluded that the Petitioner did not establish that his proposed endeavor had national importance. Specifically, the Director reviewed the business plan for the Petitioner's company and determined that its projections for revenue and job creation would not have the type of "substantial positive economic effects" that were noted in *Dhanasar* as positive factors in establishing the national importance of an endeavor. *Id.* at 890. The Director concluded that the Petitioner's proposed endeavor would not have broader implications within its field or otherwise be of national importance.

On appeal, the Petitioner asserts that the evidence in the record demonstrates that his proposed endeavor has national importance. Specifically, the Petitioner contends that his business plan explains "exactly what the Petitioner's contributions will be or how the Petitioner's contributions will have a profound impact on the national level." The Petitioner further asserts that his proposed endeavor would have far-reaching impacts on the shortage of truckers in the United States, the economy generally, its supply chain, and aligns with key priorities centered around safeguarding national security.

The first prong of the *Dhanasar* framework, 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

In determining national importance, the relevant question is not the importance of the 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 Dhanasar*, 26 I&N Dec. at 889. We further indicated 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.

We have reviewed the Petitioner's business plan and its projections that his proposed company will directly employ 50 employees within five years and, during that period, cumulatively pay wages of over $3.2 million and generate more than $3.5 million in revenue. The business plan uses a multiplier published by the Economy Policy Institute to show that it will generate 96 indirect jobs by the company's fifth year of operation. Importantly, these employment and revenue projections are not supported by details showing their basis. In addition, the record does not support that the direct creation of 50 additional jobs in this sector or the expected revenue generated by the company will

have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework. For instance, on appeal, the Petitioner states that on a "macroeconomic level" his venture would have "significant implications," noting that his proposed entrepreneurial endeavor "contributes to the nation's long-term economic health and stability," "reduces poverty rates," "enhances access to education and healthcare," and "fosters an environment conducive to innovation and progress." However, the Petitioner provides little explanation and supporting documentation to substantiate that his proposed trucking business would have a potential prospective national impact on the United States' long-term economic prospects, its poverty rates, education and healthcare, or innovation within the U.S. economy. Although the Petitioner asserts that his company will provide economic growth and his business plan shows his intention to expand his company, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.*

The Petitioner also points to the COVID-19 pandemic on appeal asserting that this crisis "exposed vulnerabilities in the nation's supply chain," contending that his "focus on improving supply chain…is vital contribution to society" and have "far-reaching implications on societal welfare" ensuring "that critical goods, including medical supplies and food…reach consumers reliably." However, again, the Petitioner did not sufficiently indicate or document how his proposed trucking company would have "far-reaching implications" on the U.S. supply chain such that this would have a potential prospective national impact on how critical goods are supplied within the country.

In addition, the Petitioner points to the shortage of qualified truck drivers in the United States and that his endeavor aligns with the Interim National Security Strategic Guidance (INSSG). However, the national shortage of truck drivers is not, in and of itself sufficient to establish the national importance of the Petitioner's endeavor.[3] The Petitioner has not established how the creation of 20 new truck driving positions would resolve this shortage or impact it on a national level. Moreover, although the Petitioner asserts that his endeavor aligns with the INSSG, he does not sufficiently explain how his endeavor would safeguard national security and foster a prosperous and democratic society. In sum, the Petitioner has not established by a preponderance of the evidence the national importance of any impact his proposed endeavor would have.

Moreover, the business plan highlights the Petitioner's over 20 years of experience as an entrepreneur. However, the Petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of his proposed work.

While we may agree that the Petitioner's stated intentions are admirable, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of national importance because they would not impact his field more

[3] We further note that the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. *See Dhanasar*, 26 I&N Dec. at 885; *see also* 20 C.F.R. § 656.1.

broadly. *Id*. at 893. Here, we similarly conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his own company and its clients to impact the industry more broadly at a level commensurate with national importance. Nor has he shown that the particular work he proposes to undertake offers original innovations that contribute to advancements in trucking or otherwise have broader implications for his field.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the remaining prongs, and we hereby reserve them.[4] The burden of proof is on the Petitioner to establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[4] *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 alternate issues on appeal where an applicant is otherwise ineligible).