U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31124982

Date: MAY 9, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. *See* 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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. The Director concluded that the Petitioner does not qualify for classification as an individual of exceptional ability; however, the Director did not address whether, in the alternative, the Petitioner qualifies for classification as a member of the professions holding an advanced degree. The Director also concluded that the Petitioner had not established 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established

eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) 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. *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).

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As noted above, the Director concluded that the Petitioner does not qualify for classification as an individual of exceptional ability; however, the Director did not address whether, in the alternative, the Petitioner qualifies for classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act. The Director concluded that the record establishes the Petitioner has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning and that the Petitioner has at least 10 years of full-time experience in the occupation, as contemplated by the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(B). However, the Director did not address whether this evidence satisfies the advanced degree equivalency criteria at 8 C.F.R. § 204.5(k)(3)(i)(B), implementing section 203(b)(2) of the Act. We note that, in a prior request for evidence (RFE), the Director concluded at that time, "Although the [P]etitioner established that he possessed the foreign equivalent of a U.S. bachelor's degree, he did not establish that he had at minimum, five (5) years of progressive and post-baccalaureate experience in the specialty as of the priority date." *See id.* Furthermore, the record does not clarify why the Director addressed whether the Petitioner may qualify for a national interest waiver if he was ineligible for second-preference classification, as the Director concluded.

Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See* section 203(b)(2) of the Act; *see also 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"); *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).

The Petitioner described the endeavor as a plan to operate a freight transportation company that will transport general freight and dry goods. The Petitioner submitted a business plan that indicates his company intends to employ 20 workers within the first three years of operations, with positions including truck driver, dispatcher, safety trainer, marketing analyst, and operating manager. In response to the Director's RFE, the Petitioner referenced copies of publications in the record that provide generalized information regarding the freight transportation industry. The Petitioner indicated

that he believes the proposed endeavor will have national importance because it will be in the freight transportation industry.

The Director concluded that "the proposed endeavor has substantial merit." The Director also acknowledged publications in the record providing generalized information; however, the Director observed that the "record does not demonstrate how the [Petitioner's] specific endeavor stands to affect or advance the broader industry, or that it otherwise has wider implications in the field." The Director also observed that the record does not establish whether "the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects." The Director further noted that "the record does not show that the specific proposed endeavor stands to sufficiently extend beyond the company's clients and employees to affect the field or industry more broadly at a level commensurate with national importance." Therefore, the Director concluded that the record does not establish the proposed endeavor has national importance, as required by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. The Director further concluded that the record does not satisfy the second or third *Dhanasar* prongs. *See id.* at 888-91.

On appeal, the Petitioner reiterates information in the record, such as the business plan's indication that the company would employ 20 workers within the first three years of operations. The Petitioner also references publications that provide generalized information regarding the freight transportation industry, noted above. The Petitioner reasserts that the proposed endeavor has national importance.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *See id.* at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that the Petitioner's references to publications in the record that provide generalized information regarding the freight transportation industry are immaterial to whether the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have the type of broader implications indicative of national importance, as contemplated by the first *Dhanasar* prong. *See id.* The publications, including those referenced on appeal, that provide generalized information regarding the freight transportation industry do not address the Petitioner, the specific endeavor he proposes to undertake, and how the potential prospective impact of the specific endeavor he proposes to undertake may have the type of "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* Because the publications that provide generalized information do not inform how the specific endeavor the Petitioner proposes to undertake may have national importance, they do not establish eligibility and we need not address them further.

Next, neither the business plan specifically nor the remainder of the record in general establish how the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have national importance. The record indicates that the proposed endeavor may benefit the potential clients or customers who use the Petitioner's freight transportation company's services; however, the record does not establish how the proposed endeavor may have national or even global implications within the field of freight transportation, or any other particular field, "such as those resulting from certain improved manufacturing processes or medical advances." *See id.* In turn, although the business plan indicates that the Petitioner's company intends to employ 20 workers, with the position titles noted above, the record does not establish how employing those 20 workers demonstrates "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *See id.* at 889-90.

In summation, 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. *See id.* We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.