U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 30968000

Date: MAY. 13, 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 a member of the professions holding an advanced degree or 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 employment based second preference (EB-2) 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. *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v. Garland,* 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of a 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. 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.

Whilst 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 USCIS may as a matter of discretion

grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) 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.

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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

## II. ANALYSIS

The Director observed the evidence in the record supported the Petitioner's eligibility for EB-2 classification as an individual who is a member of the professions holding an advanced degree. But the Director ultimately concluded that the Petitioner's substantially meritorious proposed endeavor did not rise to a level of national importance as required by the first prong of *Dhanasar*. The Director also determined that the Petitioner was not well positioned to advance their proposed endeavor. And the Director concluded that on balance of applicable factors, a waiver of the requirement of a job offer, and thus a labor certification, would not be beneficial to the national interest.

On appeal, the Petitioner contends that the Director erroneously denied the petition under the preponderance of the evidence standard and instead "imposed a stricter standard, and erroneously applied the law, to the detriment of the Appelant." The Petitioner specifically assigned error alleging that the Director did not "give due regard" to the resume, business plan, "evidence of the Appelant's work in the field," letters of recommendation, and industry report and articles they submitted into the record. They state on appeal that the evidence they submitted in the record prior to and at appeal

demonstrates that the Petitioner meets all three prongs under the *Dhanasar* framework and merits a discretionary waiver of the job offer, and thus the labor certification, in the national interest.

The Petitioner described their endeavor as an "entrepreneur" who planned to develop and expand [redacted] Specifically, as described in their statements and their business plan, [redacted] would offer "full-service construction management consulting and home improvement projects." As founder and chief executive officer, the Petitioner intended to exert primary responsibility "for coordinating the operational, commercial, and financial strategies," "setting the company's strategies and goals," "ensuring organizational compliance with regulations, law, procedures, policies," and "monitor[ing] the company's revenue and profits as well as review[ing] its financial and non-financial reports, so as to devise solutions and improvements."

In essence, the Petitioner's proposed endeavor is to own and operate a business. In support they submitted their business plan and "definitive statement," resume, educational documents, industry reports and articles, corporate documents, and letter of recommendation.[1] The Director issued a request for evidence (RFE) to provide the Petitioner an opportunity to submit additional evidence to establish eligibility for a waiver of the job offer requirement, and thus of a labor certification, under the *Dhanasar* analytical framework. In response to the Director's RFE, the Petitioner submitted substantially the same documentation along with new industry reports and articles, new letters of recommendation, letters of intent, and investor letters. The Petitioner stated in response to the RFE that their proposed endeavor was housed in the "architectural field" providing "construction management services" in the United States. Whilst based adjacent to HubZones in the State of Maryland, the Petitioner intended for the endeavor they would own and operate to have national operations. The Petitioner also expressed that the endeavor would have national impact due to "ripple effects" cause by its operations in the housing industry, hiring, salary expenditures, and "use of technology." And the Petitioner also asserted that immigrant owned businesses like theirs ascend to a level of national importance due to their role in the "recovery of the U.S. economy" and contributions "to the country's ongoing economic growth."

To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that their proposed endeavor has both substantial merit and national importance. The first prong focuses on the specific endeavor that the individual proposes to undertake. As stated above, the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The record supports the Director's determination that the Petitioner's proposed endeavor was substantially meritorious.

The Director concluded that the record did not demonstrate the Petitioner's proposed endeavor's national importance. In determining national importance, the focus is not on the importance of the industry in which the petitioner will work or even their past success. The focus is on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec.at 889. In *Dhanasar* we said that "we look for broader implications." Broader implications are not necessarily geographically evaluated; implications within a field which demonstrate a national or even international influence of broader scale can rise to a level of national importance. And substantial

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

positive economic impacts, such as a significant potential to employ U.S. workers particularly in an economically depressed area, can also help a proposed endeavor rise to a level of national importance.

The Petitioner's assertions in the proceedings below and at appeal emphasize that it is their execution of their proposed endeavor which elevates it to a level of national importance based on their near two decades of experience working in various businesses in several roles with management and operations aspects. But the Petitioner's argument spotlights a fundamental misunderstanding of the first prong of the *Dhanasar* framework. The first prong of the *Dhanasar* framework focuses on the proposed endeavor; not on the Petitioner's execution of that proposed endeavor. The *Dhanasar* framework is consequently unconcerned with the likelihood of the success of the proposed endeavor. The Petitioner's contentions about their successful past performance in the endeavor they propose, as well as evidence and information of their achievements and recognition would better serve a demonstration of eligibility under the second prong of the *Dhanasar* framework.

The Petitioner's letters of recommendation, letters of intent, and letters of investment did not reflect how national importance was implicated by the Petitioner's proposed endeavor because the letters focused on the Petitioner's work, skill, and knowledge. When evaluating the national importance of a proposed endeavor under the first prong of *Dhanasar*, we are concerned with its potential prospective or future impact. The Petitioner's demonstration of a level of competence in their work does not have an influence on the proposed endeavor's potential prospective impact based on its national importance.

The Petitioner also submitted various educational documents and certificates in various discrete business-related subjects. But these do not illuminate the national importance of the Petitioner's endeavor. The certificates earned by the Petitioner relate to them as an individual and their own personal development of their core skills. As we stated earlier, the national importance of the Petitioner's proposed endeavor stands separate and apart from the Petitioner's skills.[2]

The Petitioner also submitted several reports and articles from various sources related to the importance of the construction services industry, the impact on the economy at large, the importance of immigrant investors, and the use of technology in business. This evidence supported the overall merit of the Petitioner's proposed field of endeavor. So, as we stated earlier the Director correctly concluded the Petitioner's proposed endeavor had substantial merit. But the same evidence does not adequately describe how the Petitioner's specific proposed endeavor demonstrates it has national or even global implications in the particular field, would broadly implicate matters rising to a level of national importance in the field, or confers positive economic effects.

The record also does not adequately reflect by a preponderance of the evidence with material, relevant, or probative evidence how the Petitioner's ownership and operation of an "architectural firm" providing construction management services implicates broader considerations outside the immediate circle of those individuals and entities that have engaged the Petitioner for their services or the specific business projects stemming from the property or properties the entity purchased for redevelopment or rental. The evidence does not sufficiently describe how the Petitioner's claimed benefits in the form of "generation of wealth," "investments," "creation of jobs," and "tax contributions" would expand

[2] The Petitioner's education, skills, and knowledge are a relevant point for evaluation under *Dhanasar's* second prong.

beyond the circle of those individuals engaging their services or impact matters rising to a level of national importance.

For example, whilst the Petitioner anticipates a hiring spree increasing their head count exponentially over five years and substantially increasing their expenditures on salary, it is not clear from the record how this job creation for the proposed endeavor itself would have a substantial prospective positive economic effect commensurate with national importance. The Petitioner stated that their endeavor "has significant potential to employ U.S. workers." Specifically, the business plan anticipated that the endeavor would employ 43 employees generating over $208,000 in tax revenue in five years of operation based on salary and over $3,200,000 based on sales tax revenue in the same period. But these aspirations did not demonstrate the national importance of the endeavor because they, whether realized or not, would not extend beyond the endeavor itself to have an impact on a level of national importance. The record also did not contain sufficient probative, material, or relevant evidence showing how the endeavor's hiring plan would influence the area's unemployment rate or how the endeavor's operations and revenue rose to a level of national importance.

And it is not apparent in the record how the Petitioner's development and operation of their company would play a vital role in the recovery of the U.S. economy and directly contribute to the U.S. ongoing economic growth because the Petitioner is an "immigrant entrepreneur." It is not evident from the record that the ownership of the Petitioner's proposed endeavor by a non-citizen would elevate its operations and economic activities to a level commensurate with national importance. The Petitioner cited data related to how immigrant entrepreneurs, as a group, have contributed to the U.S. economy and economic growth. But, as we stated above, the first prong of the *Dhanasar* framework focuses on the proposed endeavor. We are unconvinced that an endeavor would implicate matters nationally, globally, or broadly have potential prospective impact or positive economic effects simply because the owner is a non-citizen.

Moreover, the Petitioner stated that they would operate their proposed endeavor in [redacted] Maryland. The record does not identify the specific street address for the Petitioner's proposed endeavor. But the Form I-140 indicates the Petitioner intends to operate their business from the same address they listed as their residential address. The record of proceeding does not adequately account for how their principal place of business in a residential address would absorb their anticipated increase in headcount. And it is not clear from the evidence in the record that the Petitioner's residence is located in areas with high unemployment. We note the Petitioner expressed an intention to base their company adjacent to Small Business Administration (SBA) HUBZones. But this also does not elevate their endeavor's national importance. The HUBZone program's goal is to promote business growth in underutilized business zones with the goal of awarding 3% of federal contract dollars to companies that are HUBZone certified. Joining the HUBZone program makes a business eligible to compete for certain federal contracts in the "set-aside" category. There are several required qualifications to participate in the program, but the most dispositive requirement for purposes of our analysis is that the business seeking to participate in the HUBZone program must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. Whilst it is unknown and the record is silent about what if any federal programs exist in the "set-aside" category for nutritional services companies like the one the Petitioner proposes, the record is crystal clear that the Petitioner's proposed endeavor would be wholly owned and controlled by the Petitioner and that the Petitioner is not a U.S. citizen, a

community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. And to the extent the Petitioner is asserting that their location or intention to locate, and not participation, in the HUBZone program is relevant to the national importance of their endeavor, the record does not adequately establish the parameters the SBA considers in establishing HUBZones such that we could evaluate whether the underutilized business zones the SBA identifies would be akin to the economically depressed areas within creating employment could be a potential positive economic effect relating to the national importance of a proposed endeavor. So, the fact that the Petitioner's proposed endeavor may be in or adjacent to a HUBZone at some point in the future is wholly irrelevant to whether the Petitioner's endeavor rose to a level of national importance.

The Petitioner has not met the first prong of the *Dhanasar* analytical framework. So, we find that they have not established that they are eligible for or otherwise merit a national interest waiver as a matter of discretion. And we need not reach a decision on whether, as a matter of discretion, the Petitioner is eligible for or otherwise merits a national interest waiver under the remaining prongs of the *Dhanasar* analytical framework. Accordingly, we reserve these issues. *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).

## III. CONCLUSION

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 Petitioner has not met their burden of proof with persuasive material, relevant, and probative evidence which by a preponderance demonstrates the national importance of their proposed endeavor. So, their appeal must be dismissed.

**ORDER:** The appeal is dismissed.