U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31108919

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 in the field of athletic training and physical education, seeks second preference immigrant classification (EB-2) 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 EB-2 immigrant classification. *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 Petitioner established he was an advanced degree professional, but had not demonstrated 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.

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,[1] 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Petitioner proposes to establish a "specialized physical training services firm that provides personalized functional exercise training programs for groups (2x week), personalized exercise programs for groups (3x week), and one-on-one personalized functional exercise training planned to be headquartered in Georgia with two business units in Georgia and Florida."

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.

The Director determined that the Petitioner's proposed endeavor was of substantial merit, and we agree. However, the Director concluded the Petitioner did not establish that his proposed endeavor has national importance.

On appeal, the Petitioner contends that the Director did not give due regard to the evidence submitted, specifically his resume, business plan, documentation of his work in the field, letters of recommendation, and industry reports and articles. He further asserts that he qualifies for a national interest waiver. In addition, the Petitioner relies, in part, on his over 14 years of experience in the business and fitness field to establish the national importance of his proposed endeavor. However, the Petitioner's expertise and record of success in previous positions 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.

We have reviewed the staffing and revenue projections in the submitted business plan, which project that the company will directly employ 38 employees within five years and, during that period, cumulatively pay wages of $3.74 million and generate $9.13 million in revenue. Importantly however, these employment and revenue projections are not supported by details showing their basis, nor do they demonstrate a significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Specifically, the record does not support that the direct creation of 38 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.

In addition, the Petitioner states in his business plan that he intends to "help to fuel small business growth in historically underutilized business zones" in the cities of [redacted] and references HuBZones even though he concedes the company "does not qualify and does not intend to be eligible for the HUBZone program."[2] Moreover, while the Petitioner states that he "wants to take a stand and impact, generating jobs for U.S. workers in these underutilized areas, improving the wages and working conditions for the U.S. workers, helping the local community bring investments to the region and economic development," and provide "specialized physical training services in the

[2] Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized business zones, with a goal of annually awarding at least 3% of federal contract dollars to HUBZone-certified companies annually. *See* "HUBZone Program," https://www.sba.gov/federal-contracting/contracting-assistanceprograms/hubzone-program.

U.S., improving [the] U.S. economy," the Petitioner has not provided evidence that the areas where his company intends to operate are economically depressed, that it would employ a significant population of workers in those areas, or that his endeavor would offer a region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue. While the intention is meritorious, the Petitioner has not provided corroborating evidence to support these claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *Chawathe*, 25 I&N Dec. at 376.

We also reviewed the Petitioner's letters of recommendation. The authors praise the Petitioner's abilities in the physical fitness sector and the personal attributes that make him an asset to the workplace. While they evidence the high regard the Petitioner's professional acquaintances have for him and his work, none of them offer persuasive detail concerning the impact of his proposed endeavor or how such impact would extend beyond his clients. As such, the letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*.

Moreover, the Petitioner emphasizes the importance of the field of physical education and the wellness sector and submitted industry reports and articles discussing athletic trainers and immigrant entrepreneurship. However, 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 specific endeavor that the foreign national proposes to undertake." *See id.* at 889. 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.* While the Petitioner proposes to work in an important industry or field that may be the subject of national initiatives, this is not necessarily sufficient to establish the national importance of the specific proposed endeavor. Further, the articles and reports do not discuss any particulars of the Petitioner's proposed endeavor or its prospective impact rising to the level of national importance.

In *Dhanasar*, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Likewise, the Petitioner has not established how providing his services as an athletic trainer stands to sufficiently extend beyond his clients to impact the field more broadly at a level commensurate with national importance.

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.[3] 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.

[3] *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).

ORDER: The appeal is dismissed.