U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37312777

Date: MAY 15, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a fitness and health professional, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, as well as a national interest waiver of the job offer requirement attached to this classification. 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 the Petitioner did not establish eligibility for a national interest waiver under the framework outlined in Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). 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.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, 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.

Id. at 889.

II. ANALYSIS

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." Id. at 889. 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. Id. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual. As such, we will first identify the Petitioner's endeavor as shown in the record. Then, we will evaluate the Petitioner's evidence in support of the endeavor's substantial merit and national importance.

The Petitioner asserts that his proposed endeavor is to establish a health and performance training center that will provide personalized exercise training, group classes, martial arts training, physical and rehabilitation therapy, athletic performance training, training for healthy aging, physical assessments, and specialized training programs. He contends that he can have a positive impact on the United States by: (1) having an impact on public health and healthcare; (2) enhancing workforce productivity and economic growth (by reducing absenteeism due to enhanced health and by incorporating injury prevention strategies and rehabilitation programs); (3) building social engagement in shared spaces such as gyms, sports teams, and recreational centers; (4) aligning with national health and wellness policies; and, (5) generating jobs and economic opportunities as his endeavor creates fitness centers and community programs. He projects that his endeavor will employ 29 employees within five years.

Additionally, he contends that obesity in the United States is a significant public health issue, a major risk factor for many chronic diseases, and a significant contributor to healthcare costs in the United States, and that his fitness center will play a vital role in developing wellness programs that prevent obesity.

The Director determined that the Petitioner established eligibility for the underlying EB-2 classification as an advanced degree professional and determined that the Petitioner is well-positioned for his endeavor. The remaining issues on appeal are whether the Petitioner has established the national importance of his proposed endeavor under *Dhanasar's* first prong and whether on balance waiving the job offer requirement would benefit the United States under the third prong.

In her decision, the Director determined that the Petitioner's proposed endeavor is of substantial merit, and we agree. Turning to the national importance of his endeavor, the Director concluded that the Petitioner did not establish that his proposed endeavor has national importance.

On appeal, the Petitioner contends that the Director erred in finding that the record does not establish that his proposed endeavor will have broader implications in his field, substantial economic benefits, significantly impact employment levels, or have national or global implications. In support, the

Petitioner submits a brief and reasserts his eligibility, citing to the evidence and arguments contained in his initial filing and his response to the Director's request for evidence, including a business plan. He further presents new evidence on appeal: a study of the National Institute of Diabetes and Kidney Diseases regarding overweight and obesity statistics, an article about the value of community sport and physical activity in England, and several articles about the benefits of more physical activity.

We acknowledge that the Petitioner's proposed endeavor's merit may be demonstrated in a range of areas, and it has positive objectives. However, as discussed below, the Petitioner has not established that his proposed endeavor is of national importance.

Upon de novo review of the entire record, including the additional evidence submitted on appeal, we find that the Petitioner does not provide evidence or arguments which overcome the Director's determination. For example, as noted by Director, while the business plan gives insight into the Petitioner's current plans, it lacks specificity and detail and is not supported by independent, objective evidence to establish that the proposed endeavor has national importance. The business plan makes various staffing and revenue projections but does not offer any details showing their basis or an explanation of how they will be realized.

We note that in Dhanasar, we determined that 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. Similarly, the record here does not establish that the Petitioner's endeavor as an exercise trainer and group fitness instructor would impact the industry more broadly, as opposed to being limited to his clients.

Therefore, we adopt and affirm the Director's decision as it relates to this prong. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); Chen v. INS, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

Because the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Since the 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 third prong. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976).

ORDER: The appeal is dismissed.