U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31205528

Date: MAY 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in commercial photography and video, podcast, and multimedia production, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category – and thus related requirements for certifications from the U.S. Department of Labor (DOL) – if petitioners demonstrate that waivers of these U.S.-worker protections would be "in the national interest." *Id.*

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner demonstrated neither his qualifications for the EB-2 category nor the merits of a national interest waiver. On appeal, the Petitioner claims that the Director did not give "due regard" to his evidence.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the record does not support a national interest waiver because the Petitioner has not established the claimed "national importance" of his proposed U.S. venture. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must demonstrate their qualifications for the EB-2 category, either as members of the professions holding an "advanced degree" or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this immigrant visa category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ the individuals in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor certification requirements by demonstrating that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. 884, 889-91 (AAO 2016).

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Brazilian native and citizen, came to the United States as a teenager. He has more than 12 years of experience in commercial photography and video, podcast, and multimedia production.

The Petitioner states his intent to establish a U.S. business providing multimedia production and marketing services. In 2023, he formed a limited liability company for this purpose. But the record does not indicate that the company has yet commenced business. A business plan projects that, by the company's fifth year of operations, it would employ 48 people[1] and generate revenues of about $2.1 million.

The Director concluded that the Petitioner did not demonstrate EB-2 qualifications as a noncitizen of exceptional ability. *See* section 203(b)(2)(A) of the Act. Regarding the requested national interest waiver, the Director found that the Petitioner's proposed endeavor has substantial merit. *See Matter of Dhanasar*, 26 I&N Dec. at 889. But the Director concluded that the Petitioner did not establish that: his endeavor has national importance; he is well positioned to advance the venture; or a waiver would benefit the United States. *Id.* at 890-91.

B. EB-2 Qualifications

To qualify as a noncitizen of exceptional ability, a petitioner must meet at least three of six initial evidentiary requirements. 8 C.F.R. § 204.5(k)(3)(ii)(A–F).[2] If a petitioner meets three of the criteria, USCIS must then consider all the evidence and determine whether the noncitizen has demonstrated that they have a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "exceptional ability"); *see generally* 6 *USCIS Policy Manual* F.(5)(B)(2), www.uscis.gov/policy-manual.

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[1] On appeal, the Petitioner claims that his business would "generat[e] around 66 employment opportunities." Because he did not initially assert the company's generation of 66 future jobs, we cannot consider the higher figure. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to demonstrate eligibility "at the time of filing the benefit request").

[2] If the evidentiary standards do not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish their eligibility. *See* 8 C.F.R. § 204.5(k)(3)(iii).

The Director found that the Petitioner met two initial evidentiary criteria. On appeal, the Petitioner contends that he also met three others. But, as we can resolve this appeal on another ground, we decline to reach and hereby reserve consideration of the Petitioner's appellate arguments regarding the additional evidentiary requirements. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate appellate issues where a noncitizen did not otherwise qualify for relief).

C. Substantial Merit

A proposed undertaking may have substantial merit whether it "has the potential to create a significant economic impact" or relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889.

The record supports the Director's finding that the Petitioner's proposed endeavor has substantial merit. The Petitioner demonstrated that his venture could generate U.S. jobs and tax revenues and increase cultural and artistic diversity in the country.

D. National Importance

When determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

We agree with the Director that the Petitioner has not demonstrated the potential impact of his proposed endeavor beyond his business, employees, and clients. On appeal, the Petitioner contends that his business's forecasted revenues "demonstrate[] the company's robust potential for revenue generation, thereby contributing to economic expansion and stability." But the Petitioner does not explain how the business's five-year projections of $2.1 million in revenues and 48 employees would potentially and substantially affect the national economy. He also has not demonstrated that his business would advance the field of commercial photography and video, podcast, and multimedia production.

The Petitioner argues that he would locate his company's headquarters in an economically depressed city, thereby "help[ing] to fuel small business' growth in historically underutilized business zones (HUBZones)." He describes the city as "a qualified HUBZone area." The term "HUBZones" stands for "Historically Underutilized Business Zones," geographic areas that, based on income and unemployment data, the U.S. Small Business Administration (SBA) has found to be "economically distressed." *See* SBA, "HUBZone Program," www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program.

The Petitioner seems to describe the entire city where his business would base its headquarters as a HUBZone. But a map in the company's business plan and an SBA website indicates that only certain sections of the city are HUBZones. The Petitioner has not indicated where his company's headquarters would lie in the city or otherwise demonstrated how the business would benefit a HUBZone. The record therefore does not sufficiently show that the Petitioner's proposed business would have significant positive effects on an economically depressed area.

The Petitioner contends that his proposed business "undeniably holds national significance. This importance stems from the crucial role that business development professionals play across all types of businesses." He states: "[W]ith the ever-changing business sphere, the industry and U.S. companies require specialized professionals who can assist them in implementing, or rather institutionalizing, effective sales and marketing strategies that align well with market occurrences and fluctuating regulations." He also points to several articles about immigrant entrepreneurs and the contributions they have made to the U.S. economy.

As previously indicated, however, when assessing national importance, we must focus on the *particular* proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889 ("The first prong, substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake.") (emphasis added). The Petitioner's specific proposed business may generate revenues and jobs, and "create value for U.S. organizations." But he has not demonstrated that his company would potentially affect the economy or his field on a national level.

The Petitioner also submitted an expert opinion from a U.S. journalism professor. The professor found that the Petitioner's proposed venture has national importance. The opinion states that the Petitioner's proposed business would: generate job growth and tax revenues; help businesses boost their images, leading to economic growth; promote cultural representation and diversity by "showcasing unique perspectives;" provide education and skill development; and "align with the U.S. government's digital strategy to use digital technologies to enhance government operations, service delivery, and citizen engagement."

The expert opinion indicates that the Petitioner's proposed endeavor would contribute to U.S. economic and cultural goals. But the opinion does not demonstrate how the Petitioner's *specific* venture – by itself – would potentially affect the economy or his field on a national level. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (allowing the immigration service to reject or give lesser evidentiary weight to expert testimony that contradicts other information or "is in any way questionable").

The Petitioner's proposed endeavor reminds us of a proposal in *Dhanasar*. There, we found that a plan to teach U.S. university students in science, technology, engineering, and mathematics (STEM) disciplines had substantial merit. *Matter of Dhanasar*, 26 I&N Dec. at 893. But we concluded that the proposal lacked national importance because "the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." *Id.*

Like the petitioner in *Dhanasar*, the Petitioner's proposed endeavor has substantial merit. But also like that petitioner, he has not sufficiently demonstrated that his proposed business would impact the

economy or the field of commercial photography and video, podcast, and multimedia production "more broadly." The Petitioner therefore has not demonstrated the claimed national importance of his proposed endeavor.

E. The Remaining Issues

Our decision regarding the national importance of the Petitioner's proposed venture resolves this appeal. Thus, as with his contentions regarding additional evidentiary requirements, we decline to reach and hereby reserve consideration of his appellate arguments regarding his positioning to advance his proposed venture and a waiver's purported benefits to the United States. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not demonstrated that his proposed endeavor has national importance. Thus, under our framework, he does not qualify for a national interest waiver. We therefore affirm the petition's denial for lack of a labor certification.

ORDER: The appeal is dismissed.