U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31002853

Date: MAY 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an area manager/operational director, seeks classification as a member of the professions holding an advanced degree. *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, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he 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. 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. Section 203(b)(2)(B)(i) of the Act. 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 U.S. Citizenship and Immigration

Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates 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 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 petitioner to obtain a labor certification; 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 petitioner 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 Petitioner proposes to work in the United States as an area manager for companies conducting business across various industries. The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

[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 Director issued a request for evidence (RFE) requesting, among other things, further evidence of how the proposed endeavor would be of national importance. In response, the Petitioner provided additional documents including a professional plan, letters of recommendation, and industry reports and articles. In denying the petition, the Director concluded that although Petitioner's proposed endeavor has substantial merit, the Petitioner has not submitted sufficient evidence to establish the national importance of his endeavor. The Director also determined that the Petitioner did not establish his proposed endeavor has broader implications, has significant potential to employ U.S. workers, and that it would broadly enhance societal welfare or cultural or artistic enrichment. Furthermore, the Director found that the Petitioner did not provide sufficient evidence to confirm whether his proposed endeavor will have substantial positive economic effects, particularly in an economically depressed area as contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner argues that the Director's decision contained errors of law and fact. The Petitioner further contends that the Director applied a "higher standard of proof" and "failed to consider the totality of the evidence presented." The Petitioner also claims that the Director did not consider the evidence presented including documents submitted in response to the RFE. The Petitioner highlights the evidence submitted in support of the petition and in response to the RFE to underscore the sufficiency of the submitted evidence.

As previously noted, the first prong, substantial merit and national importance, focuses on the specific endeavor 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 record shows that the Petitioner's proposed endeavor is to work as an area manager for companies conducting business across various industries, with a particular focus on small and medium-sized enterprises. The Petitioner seeks to provide exceptional business practices and services to support and advise companies of all sizes in diverse industries, customized to their specific needs.

The expert opinion letters' authors discuss the Petitioner's education and professional experience and emphasize the significance of area managers and business management in general. The authors state that the Petitioner's proposed endeavor to work as an area manager aligns with government initiatives and maintain that the endeavor is of national importance due to the impact of the hotel industry on the U.S. economy. The authors nonetheless do not articulate how the Petitioner's specific proposed endeavor has national or global implications beyond the clients and companies he elects to work with.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Petitioner's work. While the Petitioner claims his proposed endeavor is of national importance, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. 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. Here, the record does not include adequate corroborating evidence, to show that the Petitioner's specific proposed endeavor offers broader implications in his field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country

that rise to the level of national importance. Though we acknowledge the Petitioner's assertions and the evidence he submits on appeal, we conclude that the Petitioner has not shown his proposed endeavor stands to sufficiently extend beyond his clients to enhance societal welfare on a broader scale indicative of national importance.

The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that his specific endeavor has national importance under *Dhanasar's* first prong. The Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. Specifically, the Petitioner has not demonstrated that his specific endeavor stands to provide substantial economic benefits in the United States. While the Petitioner claims that his experience in business management and corporate marketing, along with his education, will benefit several businesses by enabling them to hire workers, increase company profits, boost federal tax revenues, gain a competitive advantage, and generate substantial positive economic effects, the record does not support the Petitioner's general assertions with corroborating evidence demonstrating the plausibility of those assertions.

The Petitioner argues that he has submitted evidence showing that his proposed endeavor has potential to create a significant economic impact because he is "currently playing a crucial role in the expansion of the hotel industry in the [redacted], Texas] area." He states the project will lead to the addition of more hotels, additional employees, an 80% growth in the sector, and substantial contributions to the national economy. Even if the Petitioner's projections are realistic, the Petitioner nonetheless needs to show that his specific proposed endeavor will have broader impact on the business management and hospitality industry that would extend beyond his employers and customers.

The Petitioner refers to industry reports and articles to highlight the crucial role that area managers and business development professionals play in every business and emphasize the importance of his proposed endeavor. The Petitioner also states that his proposed endeavor is of national importance because it aligns with multiple federal initiatives aimed at fostering growth in the hospitality sector. As previously mentioned, 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 "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner has not sufficiently explained how he will positively impact the U.S. economy and create direct and indirect jobs to move the U.S. economy on a broad scale rising to the level of national importance. Without evidence projecting U.S. economic impact or job creation attributable to the Petitioner's proposed endeavor, it is insufficient to assert that the benefits to the U.S. regional or national economy resulting from the proposed endeavor would rise to the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner explains that his academic background and 13 years of experience in designing and implementing business development and investment plans will address industry needs and contribute to achieving government goals for economic growth, competitiveness, full employment, innovation, and economic recovery. Although an individual's experience, qualifications, contributions, and achievements are material, they are misplaced in the context of the first *Dhanasar* prong. The Petitioner's educational background and professional experience are material to *Dhanasar's* second prong—whether an individual is well positioned to advance a proposed endeavor—but they are

immaterial to the first *Dhanasar* prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91.

The Petitioner urges us to take into account the broader context and the extensive impact of his contributions to the hospitality industry when assessing whether his proposed endeavor has significant impact that rises to the level of national importance. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For the aforementioned reasons, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the *Dhanasar* analytical framework's requisite first prong, we conclude that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.