U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30833609

Date: MAY. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as well as a national interest waiver of the job offer requirement attached to this 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 the record did not establish the Petitioner's eligibility for the requested EB-2 immigrant classification or the requested national interest waiver. 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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[3]

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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[4], 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.

II. ANALYSIS

On appeal, the Petitioner asserts he is eligible for the requested EB-2 immigrant classification as an individual of exceptional ability as well as the requested national interest waiver. Upon de novo review, we conclude the Petitioner is not eligible for a national interest waiver under the *Dhanasar* framework, and we will therefore decline to reach and hereby reserve the issue of his EB-2 eligibility.[5]

The first *Dhanasar* prong, 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The Petitioner proposes to work in the United States as a legal consultant "to continue using his expertise and knowledge in the areas of labor, civil, and social security law, in addition to the administrative field . . . to provide assistance in legal matters and advise in legal documentation, negotiations, contracts, and much more." Specifically, the Petitioner "seeks to offer his expertise to businesses and individuals in need of navigating the complex legalities of the Brazilian market." In support of this endeavor, the Petitioner detailed his professional plans, which primarily focused on the Petitioner's prior experience working as an attorney in Brazil advising companies in numerous industries. The Petitioner asserted that he is "uniquely qualified to help U.S. companies better

[3] *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); *see generally* 6 USCIS Policy Manual, supra, at F.5(B)(2).

[4] *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).

[5] Where a case warrants a dismissal regardless of other eligibility considerations, it is unnecessary that we address those other considerations. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)).

negotiate the current political turmoil and economic difficulties in Brazil[, and] would work well to serve as a consultant for multinational companies, including those companies doing business or planning to do business in Brazil." To accomplish this, he stated he would "direct and manage activities related to the labor, social security, and commercial areas for companies that are interested in establishing a branch in Brazil." The Petitioner also claimed his endeavor would ultimately contribute to the U.S. economy due to the increased flow of money throughout the United States resulting from his clients' increased business revenue.

The Director concluded that, while the Petitioner established the substantial merit of his endeavor, he did not establish its national importance, as the record did not show his *specific* endeavor would result in broader implications to the field, beyond the direct impact to his potential clients. The Director also concluded the Petitioner did not establish that his endeavor would result in "substantial economic effects," as contemplated in *Dhanasar*. *See Dhansar* at 890. On appeal, the Petitioner generally asserts that the Director did not apply the correct burden of proof and failed to properly consider the evidence establishing his credentials and experience in the field, the industry reports establishing the national importance of the legal field as well as the shortage of professionals within his field.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review, we agree with Director's conclusion that the Petitioner has not established, by a preponderance of the evidence, that his endeavor of working as a legal consultant for various U.S. businesses has national importance as contemplated under the *Dhanasar* framework.

The record contains media articles and industry reports on the topics of the legal profession, the legal services industry in the United States, and the demand for skilled professionals in this field. In addition, the Petitioner provided articles and reports discussing U.S.-Brazil trade opportunities, the tax-related complexities of doing business in Brazil and Latin America, and the economic benefits of international trade and foreign direct investment in the United States. We agree that this evidence supports the Director's determination that the Petitioner's proposed endeavor has substantial merit. In determining national importance, however, 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" and its potential prospective impact. *Dhanasar,* 26 I&N Dec. at 889.

Therefore, while we recognize the role of legal consultants in assisting businesses to maximize profitability and trade opportunities, the Petitioner's intent to work in this field alone is not sufficient to establish the national importance of his proposed endeavor. In *Dhanasar*, we emphasized that "we look for broader implications" of the specific 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." 26 I&N Dec. at 889. We also stated that "[a]n 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.* at 890.

Notably, on appeal, the Petitioner does not address the Director's conclusions regarding the limited implications of his *specific* endeavor, and instead continues to focus primarily on the importance of the legal and business development fields as well as his professional experience. Likewise, while the Petitioner asserts that his "vast professional experience, accomplishments, and unrivaled knowledge in both Brazilian and international law position him as an invaluable asset to American businesses and the U.S. economy at large," his expertise acquired through his academic and professional career relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong. A determination regarding the claimed national importance of a specific proposed endeavor generally cannot be inferred based on the Petitioner's past achievements, just as it cannot be inferred based on general claims about the importance of a given field or industry.

The expert opinion letter from Professor L-M- similarly focuses on the Petitioner's background and the importance of trade between the United States and Brazil when addressing the national importance, without establishing that the prospective impact of his specific endeavor rises to the level of national importance contemplated under *Dhanasar*. The letter states "[h]aving the benefit of the professional expertise of a seasoned [a]ttorney can be advantageous in helping U.S. companies successfully navigate the myriad complex regional trading laws and bureaucracies" when entering the market in Brazil. Yet, the expert does not establish that the broader implications of the Petitioner's endeavor will extend beyond the benefits provided to his clients. 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 Petitioner's general assertions of improving and expanding his clients' business operations in the United States and Brazil do not establish that his proposed endeavor stands to sufficiently impact the field more broadly at a level commensurate with national importance. Moreover, the professor also asserts the Petitioner will "use his experience in business and labor law to help small and medium-sized enterprises in the U[nited] S[tates] improve operations and achieve better productivity and profitability levels," ultimately resulting in increased tax revenue for the United States. While any increased business activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the economic activity resulting from his work as a legal consultant would rise to the level of having regional or national economic impacts.

USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id., see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

On appeal, the Petitioner also asserts that he "wants to take a stand and impact, generating jobs for U.S. workers . . . improving wages and the working conditions of U.S. workers, [and] hel[p] the [l]ocal [c]ommunity bring investments into the region and economic development." However, the Petitioner

did not provide sufficient evidence to explain how his employment as a legal consultant would directly result in "substantial positive economic effects" beyond the financial benefits to his clients. *Dhanasar* at 890. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

Finally, the Petitioner also does not elaborate on how his employment as a legal consultant would meaningfully address the claimed shortage of legal professionals at a national level. A shortage of qualified professionals alone does not render the work of an individual legal consultant nationally important under the *Dhanasar* precedent decision. Several of the Petitioner's claims of national importance could reasonably apply to any legal consultant working within international business development, but Congress did not provide a blanket exemption for this occupation with respect to the job offer and labor certification requirement.[6]

While the Petitioner's evidence shows how his proposed endeavor may stand to positively impact his clients, it does not demonstrate how the endeavor will have a broader impact consistent with national importance. Accordingly, the Petitioner has not established that his proposed endeavor meets the first prong of the *Dhanasar* framework.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits 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 eligibility and appellate arguments under *Dhanasar*'s second and third prongs as well as a determination as to whether the Petitioner has met the requirements of EB-2 classification. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.

[6] The U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. A determination as to whether the benefits inherent in the labor certification process are outweighed by other favorable factors relates to the balancing analysis set forth under the third prong of the *Dhanasar* analytical framework.