U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31108897

Date: MAY 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as an individual of exceptional ability in the sciences, arts or business. *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 the Petitioner does not qualify for classification as an individual of exceptional ability. The Director also concluded that the Petitioner does not qualify, in the alternative, as a member of the professions holding an advanced degree. The Director further concluded that the Petitioner 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 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.

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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. 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, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest

waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that 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. *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 is discretionary in nature).

The first prong, substantial merit and national importance, focuses on the specific endeavor that 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As noted above, the Director concluded that the Petitioner does not qualify for classification as an individual of exceptional ability. More specifically, although the Director found that the record satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii), the Director concluded that the record does not establish the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. *See* 8 C.F.R. § 204.5(k)(2).

Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See* section 203(b)(2) of the Act; *see also 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"); *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).

The Petitioner described the endeavor as a plan to operate a company that sells, installs, and maintains refrigeration equipment, "specialized in the food industry." The Petitioner submitted a business plan, which indicates that the company would be based in [redacted] South Dakota. The business plan asserts, "The South Dakota area has very few establishments operating in the transportation refrigeration sector." However, we note that neither the business plan nor the remainder of the record elaborates—with objective information—on what relationship there may be between "very few establishments" and whatever demand for relevant products and services there may be in "the South Dakota area." The business plan indicates that the Petitioner would work as the company's chief executive officer with seven additional employees for a total of eight workers in the first year of operation, increasing to a total of 18 workers within the first five years of operation. The business plan describes workers in the following job categories: secretary; administrative assistant; advertising manager; sales representative; technician; and cleaner. The Petitioner also submitted copies of publications that provide generalized information regarding business, refrigeration equipment, refrigeration equipment technicians, and similar topics.

The Director acknowledged information in the record and concluded that "the proposed endeavor has substantial merit," as required by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at

889-90. However, the Director noted that "the [P]etitioner has not provided specific information or data relevant to economic effects potentially resulting from this general entrepreneurship." The Director also observed, "The [P]etitioner has not established that his proposed work has implications beyond the current company or any prospective businesses [sic] partners, alliances, and/or unidentified clients at a level sufficient to demonstrate the national importance of the endeavor," referencing the first *Dhanasar* prong. The Director also acknowledged the business plan's indication that the company would employ 18 workers within the first five years of operations; however, the Director noted that the record does not establish how that employment "would have substantial positive effects in the South Dakota community," again referencing the first *Dhanasar* prong. Ultimately, the Director concluded that the record does not establish how the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. *See id.* The Director further concluded that the record does not satisfy the third *Dhanasar* prong, without addressing whether the record satisfies the second *Dhanasar* prong. *See id.* at 888-91.

On appeal, the Petitioner submits additional copies of publications that provide generalized information regarding business, refrigeration equipment, refrigeration equipment technicians, and similar topics, which, in relevant part, the Petitioner asserts establish the proposed endeavor has national importance.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *See id.* at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that the Petitioner's references to publications in the record that provide generalized information regarding business, refrigeration equipment, refrigeration equipment technicians, and similar topics, are immaterial to whether the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have the type of broader implications indicative of national importance, as contemplated by the first *Dhanasar* prong. *See id.* The publications, including those referenced on appeal, that provide generalized information do not address the Petitioner, the specific endeavor he proposes to undertake, and how the potential prospective impact of the specific endeavor he proposes to undertake may have the type of "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* Because the publications that provide generalized information do not inform how the specific endeavor the Petitioner proposes to undertake may have national importance, they do not establish eligibility and we need not address them further.

The record indicates that the proposed endeavor may benefit the Petitioner's company's potential customers or clients; however, the record does not establish how the potential prospective impact of the proposed endeavor may have the type of broader implications indicative of national importance,

as contemplated by the first *Dhanasar* prong. For example, although the record establishes that the Petitioner's company will sell, install, and maintain refrigeration equipment, "specialized in the food industry," it does not establish how the Petitioner's company's operations may have national or even global implications, "such as those resulting from certain improved manufacturing processes or medical advances," within the refrigeration equipment industry, the grocery industry, the food service industry, or any other particular industry. *Id.* In turn, although the business plan in the record indicates that the Petitioner's company intends to employ 18 workers—including the Petitioner—in the job categories noted above, in [redacted] South Dakota, the record does not establish how employing 18 workers in those job categories in [redacted] South Dakota, demonstrates "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. *See id.* We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.