U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31071064

Date: MAY 28, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a construction operations manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 that although the Petitioner qualified as an advanced degree professional, he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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.

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,[2] 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

[1] 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).

[2] *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).

- On balance, waiving the job offer requirement would benefit the United States.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

The Petitioner proposed to work as a construction operations manager at his construction company, [redacted] located in [redacted] Florida. The Petitioner stated that his company "provides an extensive range of services such as architectural design, demolition, engineering, rebuilding, restoration, remediation, remodeling, roofing, and structural repairs" to single-family homes as well as commercial spaces.

The Director determined that the Petitioner's proposed endeavor was of substantial merit, and we agree. However, the Director concluded the Petitioner did not establish that his proposed endeavor had national importance.

On appeal, the Petitioner asserts he provided sufficient evidence to demonstrate national importance, including his personal statement, probative research, a business plan, and an expert opinion letter. He contends the Director "offered divergent analyses and conclusions" regarding his personal statement, probative research, and business plan and "overlooked objective and corroborative evidence" such as the expert opinion letter.

The first prong of the *Dhanasar* framework, 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. We look for broader implications. 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.* at 889-890.

The Petitioner relies, in large part, on his more than 10 years of experience in the construction industry to establish the national importance of his proposed endeavor. However, the Petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of his proposed work.

In addition, the Petitioner highlights that his business plan addressed indirect job creation utilizing the Regional Input-Output Modeling System (RIMS II) multipliers for the "Construction Industry" in Florida. According to the RIMS II multipliers, the Petitioner asserted that his proposed endeavor would "[g]enerate direct effects on employment equivalent to 15 jobs in 2027/2028, as it will reach a total of eight in-house employees in the same year" and "[g]enerate direct effects on earnings of household equivalent to $979,870.10 in 2027/2028, as its payroll will reach $546,772 in the same year." However, the Petitioner does not elaborate on the 15 indirect jobs the RIMS II calculation anticipates his company will create, such as the type of jobs those would be, a breakdown of part-time versus full-time positions, and where they would be created. Without more detailed, credible evidence of the types of jobs that would be created and where the jobs would be located, the record does not establish that employing the positions listed in the business plan would show the type of substantial

positive economic effects, particularly in an economically depressed area, contemplated by the first *Dhanasar* prong. *See id.* at 889-90.

Moreover, we have reviewed the staffing and revenue projections in the submitted business plan, indicating that the company would directly employ 8 employees within five years and, during that period, cumulatively pay wages of over $546 thousand and generate over $11 million in revenue. Importantly however, these employment and revenue projections are not supported by details showing their basis, nor do they demonstrate a significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Specifically, the record does not support that the direct creation of 8 additional jobs in this sector or the expected revenue generated by the company would have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework.

The Petitioner also asserts that the business plan contained research and data analysis demonstrating a clear understanding of the economic conditions of the target area of the proposed endeavor, the State of Florida. Consequently, the Petitioner contends that they have demonstrated the positive economic benefits of their proposed endeavor. However, the submitted evidence does not reflect that the State of Florida as a whole is an economically depressed area, nor does the Petitioner identify and support any specific economically depressed area in the State of Florida that would be positively impact by his proposed endeavor. Further, the Petitioner's business plan does not sufficiently demonstrate the potential prospective economic impact of his proposed endeavor to the field at large, other than describing a potential to achieve the construction objectives of individual customers or businesses engaging the Petitioner for his construction project development services.

The Petitioner further contends that his proposed endeavor would benefit the U.S. economy and help with the American housing deficit, upgrade the value of the residential market, impact the science, technology, engineering, and mathematics (STEM) field, and mitigate the U.S. labor market shortages and loss in economic output. The Petitioner, however, has not provided evidence demonstrating that his proposed endeavor would operate on a scale rising to the level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the potential economic activity of his specific endeavor stands to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States. 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, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its future clientele to impact his field, construction project management, the U.S. economy, or U.S. societal welfare more broadly at a level commensurate with national importance.

Moreover, the Petitioner maintains that he submitted probative research confirming that "his proposed endeavor aligns with national initiatives because the construction industry is an investment-led sector where the government shows high interest in developing infrastructure related to the health, transport, and education sector." However, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, the focus is on the "the specific endeavor that the foreign national proposes to undertake" and the endeavor's

"potential prospective impact." *Id.* at 889. In *Dhanasar*, we gave significant weight to "probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests" and "detailed expert letters describing U.S. Government interest" in Dr. Dhanasar's specific research. *Id.* at 892. Here, the Petitioner has not provided similar evidence, such as the type of expert opinion evidence or letters from government entities detailing how his specific endeavor would impact a matter that is a subject of national initiatives. None of the articles and reports specifically mention the Petitioner's endeavor or discuss the government's interest in promoting the use of his company. Therefore, we conclude that the Petitioner has not demonstrated the potential prospective impact of his specific endeavor to a matter that is the subject of national initiatives.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from a professor emeritus of civil engineering at [redacted] In addressing national importance, the author focuses on the shortage of housing, project management and construction professionals, importance of construction project management, and national initiatives. The author, however, does not address the Petitioner's business plan, the specific proposed endeavor described therein, its prospective substantial economic impact, or any broader implications of the Petitioner's intended construction project management business.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the remaining prongs, and we hereby reserve them.[3] The burden of proof is on the Petitioner to establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[3] *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 alternate issues on appeal where an applicant is otherwise ineligible).