U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31125701

Date: MAY. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability in the arts, sciences, 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.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner established his eligibility for EB-2 classification as a member of the professions holding an advanced degree, he did not demonstrate 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 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).

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,[1] 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. [2]

II. ANALYSIS

According to the Petitioner's resume, he worked as general manager of the drugstore [redacted] between 2007 and 2017, and as an external sales representative and sales supervisor with [redacted] a business specializing pharmaceutical distribution, from 2017 until 2020. The Petitioner entered the United States in April 2022 as a B-2 nonimmigrant visitor for pleasure and filed this petition in November 2022.

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.[3] Therefore, the sole issue before us is whether the record establishes that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. Although the Director found substantial merit in the proposed endeavor, and that the Petitioner is well-positioned to advance it, the Director determined that the Petitioner did not establish that his proposed endeavor has national importance and that, on balance, waiving the job offer requirement would be beneficial to the United States. For the reasons provided below, we conclude that the Petitioner has not established the national importance of his proposed endeavor and therefore is not eligible for a national interest waiver as a matter of discretion.

A. The Proposed Endeavor

The Petitioner indicated on the Form I-140, Immigrant Petition for Alien Workers, that he intends to work as a "business manager" in the United States, "overseeing business operations across departments and implementing management guidelines," and will "[m]aintain company budgets, communicate ideas between upper management and company employees, and conduct performance reviews for employees."

At the time of filing, the Petitioner submitted a "Professional Plan" in which he indicated his endeavor is to "offer to any company a professional action plan that will include budget, sales, inventory control, labor and payroll cost references, profit, and an overview of employee losses and motivation." In addition, the proposed endeavor "will support companies by creating sales strategies, locating commercial possibilities through the company's strategic planning, aligning customer needs with

[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 is discretionary in nature).

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

[3] The Director indicated that since the Petitioner qualifies as a member of the professions holding an advanced degree, she need not evaluate whether the Petitioner also qualified as an individual of exceptional ability.

selling services and products, and creating innovative sales solutions to improve the U.S. Business." Further, the Petitioner stated he "will apply my honed technical skills and experience in this field to organize the structure of organizations and thus generate greater viability and sustainability of the business and consequently generate an increase in the profits and growth of the U.S. economy."

Within his response to the Director's request for evidence (RFE), the Petitioner submitted a "Personal Statement Outlining Professional Plan," in which he indicated that as business manager he will "provide my specialized services in the financial, commercial, and sales areas with expertise in people management and strategic planning to impact the field of business through innovation in the U.S." In his statement he explained that "[d]ue to my extensive professional experience in the pharmaceutical industry, I intend to focus my contributions on this niche first, while planning to serve other industries in the future as well." He further asserted the impact of his proposed endeavor will be as follows:

> My professional undertakings and performance will undoubtedly impact companies and the economy of the United States. By developing and implementing new systems and management techniques, the companies and organizations I contribute to will experience a reduction in costs, reduction of errors and rework, and an increase in productivity with the automation of its processes that will further provide greater efficiency and increase profits. (emphasis in original)
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> . . . .
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> I will significantly contribute to enhancing profitability and promoting overall business growth in the United States.

B. Substantial Merit and National Importance

As stated, to satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that his proposed endeavor has both substantial merit and national importance. This prong of the *Dhanasar* framework focuses on the specific endeavor 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. As noted, the Director concluded that the Petitioner established that his proposed endeavor has substantial merit but determined he did not meet his burden to establish the national importance of the endeavor.

On appeal, the Petitioner maintains that the Director did not give due regard to his submitted "comprehensive set of documents, including a resume, professional plan, and reference letters" as well as cited industry articles and government reports "aiming to corroborate the national significance of his proposal." For the reasons provided below, we agree with the Director's determination that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework. We have considered evidence related to the Petitioner's proposed activities as a business manager in the pharmaceutical distribution field.[4] The Petitioner has not shown how the services he intends to provide would have broader implications in the fields of business management or pharmaceutical distribution.

[4] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

While the Petitioner's RFE response provided evidence relating to the importance of small businesses and the pharmaceutical industry to the U.S. economy,[5] when determining national importance, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor. In *Dhanasar*, we further noted that "we look for broader implications" of the 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." *Id.*

The Director determined that the Petitioner had not shown how his proposed endeavor would have broader implications within his field that would reach beyond clients utilizing his services, or that it would broadly enhance societal welfare. The Director further observed that the record did not demonstrate that the proposed endeavor has significant potential to employ U.S. workers, would impact an economically depressed area, or would have benefits to the regional or national economy that would reach the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Further, the Petitioner argued that his proposed endeavor will have an impact on U.S. pharmaceutical supply chains and will aid the nation's small businesses, matters that are the subject of national initiatives by the U.S. government. On appeal, he maintains that his proposed "initiative aligns seamlessly with U.S. governmental objectives aimed at fortifying the pharmaceutical sector, enhancing its global competitiveness, and ensuring its sustained contribution to public health and the national economy."

USCIS will consider evidence demonstrating how a specific proposed endeavor impacts a matter that a government entity has described as having national importance or a matter that is the subject of national initiatives. Again, in determining national importance, the relevant question is not the importance of the industry in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar,* 26 I&N Dec. at 889. Therefore, pursuing employment in an area that is adjacent to or aligned with the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. Here, the Petitioner has not sufficiently explained the potential prospective impact or broader potential implications of his specific endeavor on the referenced pharmaceutical distribution and small business initiatives.

The Petitioner contends on appeal that his proposed endeavor is "not only confined to serving the immediate needs of specific clients, customers, or employers but rather manifest[s] a broader, impactful vision aimed at fostering significant advancements within various sectors across the United States," and that the benefits of his proposed endeavor "will disseminate not only to others in the field, but to every other field in [the] U.S., ultimately positively impacting the entire nation's economy." However, these statements are not supported by financial projections. The record lacks evidence that the proposed endeavor's future staffing levels and business activity would provide substantial

[5] For instance, the Petitioner's RFE response letter contains a screenshot from [redacted]reseach.com showing that in 2019 the U.S. Pharmacy Market was valued at $446.1B.

economic benefits in the United States,[6] or that it otherwise has broader national implications within the field. Without this evidence, we cannot evaluate the proposed endeavor's impact on job creation or its overall economic impact.

As such, the Petitioner has not supported a claim that his proposed endeavor is likely to, for example, introduce innovations that may have broader implications for small businesses in the pharmaceutical distribution field. Although the proposed endeavor may benefit the client companies and consumers that engage the Petitioner's services, the record does not sufficiently show that such benefits, either individually or cumulatively, would rise 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. The record does not provide adequate support for a determination that his specific proposed endeavor will have such a wide-reaching impact.

We also stated in *Dhanasar* 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. Here, the Petitioner has not offered evidence identifying the area where he will operate; that it is economically depressed; that he would employ a significant population of workers in that area; or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity.

Moreover, in his personal statement, professional plan, and appellate brief, the Petitioner emphasized his professional experience in the field. The record also contains recommendation letters from his former employers, co-workers, and clients in Brazil. While important, the Petitioner's expertise acquired through his academic and professional career primarily 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 cannot be inferred based on the Petitioner's past accomplishments, just as it cannot be inferred based on general claims about the importance of a given field or industry.

In light of the above conclusions, the Petitioner has not met his burden of proof to establish that he meets the first prong of the *Dhanasar* national interest framework. Because the Petitioner has not established his proposed endeavor has national importance, he is not eligible for a national interest waiver under the *Dhanasar* analytical framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the third *Dhanasar* prong. *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).

[6] The Petitioner has not offered evidence identifying the area where he will operate his proposed endeavor.

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.

ORDER: The appeal is dismissed.