U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30338017

Date: MAY 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial manager, seeks employment-based second preference (EB-2) immigrant 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 the record did not establish that the Petitioner qualified for a 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.

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." *Id.* 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 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.

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

II. ANALYSIS

The Director concluded that the Petitioner qualified as a member of the professions holding an advanced degree. The remaining issue to be determined on appeal 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.

The Petitioner stated that he intended to operate a company providing financial consulting services to small- and medium-sized businesses in the United States. Although the Director determined that the Petitioner's proposed endeavor had substantial merit, the Director concluded the record did not establish that the endeavor is of national importance. On appeal, the Petitioner reiterates arguments for the national importance of his endeavor and cites evidence previously included in the record. The Petitioner asserts that U.S. Citizenship and Immigration Services (USCIS) "erroneously denied" the petition and "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." The Petitioner, however, does not identify any unusual requirements imposed, nor does he specify how the Director erred or what factors in the decision were erroneous.[2] This alone is grounds for dismissal. 8 C.F.R. § 103.3(a)(1)(v). Nevertheless, for the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his endeavor in order to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

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

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." *See Dhanasar*, 26 I&N Dec. at 889. 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

[1] *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).

[2] An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).

a particular field." *Id.* 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. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

The Petitioner provided industry reports and articles discussing the Brazil-U.S. Bilateral Investment Map, cross-border investments, and the impact of the pandemic on the economy. However, this material does not provide sufficient insight into the Petitioner's business plans regarding his proposed financial consultancy services company or how this specific endeavor would have a potential prospective impact of national importance.

The Petitioner also submitted letters of recommendation discussing his professionalism and expertise. We note that evidence of the Petitioner's job experience and performance generally relates not to the national importance of an endeavor, as discussed in the first prong of *Matter of Dhanasar*, but to the second.[3] As such, the letters do not sufficiently demonstrate the national importance of the Petitioner's proposed endeavor.

The Petitioner further provided a professional plan stating the following (quoted as written):

> I intend to perform in the American market as a **Financial Manager**, providing **financial consulting services to American companies** in various sectors, through my own consulting company, in order to **improve the global results of small and medium-sized companies**, contributing to the healthy development of their business. In this way, I can contribute to these companies so they may **reduce their costs, avoid bankruptcy, grow with planning and strategy, create more jobs, consequently paying more taxes**, impacting not only the local economy but also the country's as a whole. In addition, I also intend to provide **financial consulting services to Brazilian and Latin American companies that are expanding their activities to the American market**, contributing to encourage **foreign investment** to the country, which will impact the American economy through generation of new jobs and tax collection, among others.
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> . . .
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> With all the experience I have acquired over the years in the financial management of several companies, I will offer the **supervision of the company's daily financial operations**, developing and implementing short, medium, and long-term business strategies and procedures, studying **financial and market opportunities**, making diagnoses and offering more assertive solutions, **optimizing processes** and enabling reports that speed up and **facilitate accurate decision -making, avoiding losses** and

[3] Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision.

> **optimizing operating and financial results**, which will consequently favor the growth and expansion of the company, contributing to the economy of the United States.

The Petitioner's professional plan asserts that he intends to help companies manage their businesses more efficiently, to generate foreign investment, and to expand the market of Latin American businesses in the United States. The plan contemplates the creation of "direct and indirect jobs for professionals such as account executives, accountants, market intelligence analysts, accountants, lawyers and paralegals, as well as administrative assistants." A business plan submitted in response to a request for evidence uses similarly vague language to outline the Petitioner's intentions; the Petitioner stated the following in his business plan (quoted as written):

> The Company's mission will be to provide specialized financial management services to cover the needs of American SME [small- and medium-sized enterprise] companies and entrepreneurs in today's business environment, primarily by providing financial analysis and management services, which could provide significant improvements and higher performance in the financial optimization of companies and helping them to effectively face uncertainties and pave the way to future prosperity.

The Petitioner, however, did not specifically describe in his professional or business plan how he would undertake an endeavor of the scale that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. For instance, in his professional plan, the Petitioner cited employment projection data for financial managers from the U.S. Bureau of Labor Statistics and asserted that "there is a national urgency of qualified professionals to meet the indicated demand." His proposed remedy was to use his "extensive experience" to "**train and qualify new professionals in finance**, sharing [his] knowledge acquired over these years, which will favor the economy in the United States since these new professionals can also help other companies in these companies' financial management and strategic growth" (emphasis in the original). Again, the Petitioner did not specify how he would accomplish training on a scale that would impact the job market at a national level. Notably, 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

In addition, while the business plan offers an overview of the services the Petitioner intended to provide, the asserted national importance of his proposed endeavor relies on the overall importance of responsible financial management in optimizing business performance. The Petitioner did not provide independent evidence or otherwise explain how his company would have a prospective national impact on the field of financial management or an economy of any scale. For example, the business plan generally highlights the potential benefits of cross-border investment; the Petitioner, however, did not explain how he would facilitate such investments. As another example, the business plan anticipates hiring 16 individuals by the conclusion of its fifth year of operation (a number that includes positions for himself and his spouse) while generating $2,009,000 in revenue. The Petitioner did not, however, provide sufficient basis for these projections, nor are the numbers corroborated by probative evidence sufficient to demonstrate that it is likely the company will have a positive national economic impact or a national prospective impact within the field. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the nation. Specifically, he has not shown that his business stands to provide substantial economic benefits to any particular locality or to the United States overall. While the business plan vaguely explained that his company's services would benefit the U.S. economy because it would help businesses succeed through management efficiencies and foreign investments, these asserted national impacts were not sufficiently supported by objective evidence related to his specific proposed endeavor. It is not clear how a business of the size and scope described in the business plan would significantly impact a certain region in which his employees or clients are located. The Petitioner has not provided evidence to show that he would employ a significant population of workers in a particular region, nor has he shown that his proposed endeavor would offer a region or its population substantial economic benefits through employment levels, business activity, or tax revenue. As such, the business plan does not demonstrate that the prospective benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.