U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31109383

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 classification as a member of the professions holding an advanced degree or of exceptional ability. *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. *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish 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. 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.

Whilst 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 USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest.

The Director denied the petition, concluding that whilst the Petitioner was well positioned to advance their proposed endeavor, the proposed endeavor was not of national importance such that on balance a waiver of the requirement of a job offer and labor certification would be beneficial to the United States. We agree with the Director's overall decision that the Petitioner does not qualify for a national interest waiver, but we do not agree with and will withdraw the Director's specific finding that the Petitioner was well positioned to advance their proposed endeavor.

A. The Proposed Endeavor

The Petitioner intended to establish [redacted] to provide "administrative and financial advisement for small and medium-sized businesses." The Petitioner's proposed endeavor intended to target those small and medium-sized businesses that "are experiencing economic hardship

as a result of the COVID-19 pandemic, such as restaurants, small retailers, convenience stores, pet stores and small service providers that are unable to pay for specialized professional services." Upon de novo review of the evidence and assertions the Petitioner introduced in the record, we conclude the Petitioner has not adequately demonstrated the national importance of their proposed endeavor under the first prong of the *Dhanasar* framework.

B. Substantial Merit and National Importance

Whilst the Director found that the Petitioner's proposed endeavor had substantial merit, they also concluded that the Petitioner did not demonstrate that their proposed endeavor was of national importance because the Petitioner did not demonstrate the broader implications of the proposed endeavor or its potential positive economic effects. For the below reasons, we agree.

The Petitioner generally alleges on appeal that USCIS applied "a stricter standard of proof" when evaluating the evidence they submitted into the record. The evidentiary standard in immigration proceedings is the lowest preponderance of the evidence standard. The burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits. The Petitioner's evidence and argument does not help them carry their burden of production and persuasion because it is not persuasive relevant, material, or probative evidence relating to the national importance of the Petitioner's proposed endeavor under the first prong of the *Dhanasar* framework.

The relevant inquiry for evaluation of an endeavor's national importance is whether the prospective positive impact judged by the endeavor's broader implications or positive economic effects apply beyond just narrowly conferring the proposed endeavor's benefit. The Petitioner has not demonstrated how conferring the benefit to the small and medium sized businesses they intend to solicit have any implication or benefit rising to a level beyond them and touching matters of national importance. In their appeal, the Petitioner cited to "probative research" that demonstrated their "role" has "national importance." The Petitioner's "probative research" submitted into the record in its response to the Director's request for evidence (RFE) consisted of three articles that discussed the importance of small and medium-sized businesses to the U.S. economy. We acknowledge that the Petitioner's proposed business is a small business. But it is not adequately demonstrated in the "probative research" the Petitioner submitted how the Petitioner's specific proposed endeavor operating a small business in the financial management field had national, or even global, impact. Additionally, the research the Petitioner cited did not render it sufficiently apparent what broader matters the Petitioner's proposed endeavor implicates rising to a level of national importance.

And, whilst we note the Petitioner's endeavor does intend to engage with small and medium sized business for financial management needs, it is not clear in the record how the Petitioner's contemplated service relates to small and medium-sized businesses in a manner implicating matters of national

importance because any benefit or influence from the Petitioner's proposed endeavor, such that it is, would apply mainly only to those small and medium-sized businesses that work directly with the Petitioner. This is akin to how the benefit of someone's teaching is generally only directly beneficial to the students being taught and not wider population. In *Dhanasar* we discussed how teaching would not impact the field of education broadly in a manner which rises to national importance. *Dhanasar* at 893. By extension activities which only benefit a small subset of individuals and companies, like the Petitioner's proposed financial management endeavor, would not rise to a level of national importance. In sum the record supports the conclusion that the potential impact of the endeavor of providing financial management to small and medium sized businesses would benefit only the individuals and entities engaging the service.

Additionally, the record does not demonstrate with material, relevant, and probative evidence how the proposed endeavor's benefits broadly implicate matters of national importance. In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have a national importance for example, because it has national or even global implications within a particular field." *Id.* The broader implications of the proposed endeavor, national and/or international, can inform us of the proposed endeavor's national importance. That is not to say that the implications are viewed solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. The Petitioner's business plan stated the proposed endeavor would provide "administrative and financial advisement for small and medium-sized businesses" that "are experiencing economic hardship as a result of the COVID-19 pandemic, such as restaurants, small retailers, convenience stores, pet stores and small service providers that are unable to pay for specialized professional services." However, as we stated previously, there is insufficient evidence in the record to support the impact of the Petitioner's endeavor would permeate beyond the immediate sphere of those small and medium size businesses and manufacturing companies engaging the Petitioner for their services. In other words, the record does not adequately establish the broader implications of the Petitioner's proposed endeavor rising to a level of national importance. It is not clear from the record how providing "administrative and financial advisement for small and medium-sized businesses" would implicate matters at a level of national importance. And to the extent that the Petitioner asserts that the national importance of their proposed endeavor is apparent upon aggregation of the benefits (or so called "ripple effects) realized by their clients engaging their services, the record as it is presently composed does not convincingly reflect the level at which this aggregation would implicate an issue rising to a level of national importance.

In the same vein, it is unclear from the evidence in the record that the work of a single financial manager in a financial management endeavor, irrespective of that proposed endeavor's success or failure, would have a significant impact on the field beyond its immediate sphere of influence. The evidence in the record does not highlight how the work of one professional could have broader implications that address "economic hardship as a result of the COVID-19 pandemic" in a manner rising to a level of national importance.

The Petitioner asserts on appeal that their proposed endeavor has "tremendous positive economic effects." We 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. The Petitioner roots the potential positive effects of their financial management firm in their potential for job creation and revenue generation. The Petitioner anticipates a hiring spree increasing their head count to 13 individuals over five years and increasing their expenditures on salary, but it is not clear from the record how this job creation for the proposed endeavor itself would have a substantial prospective positive economic effect commensurate with national importance. Specifically, the business plan anticipated that the endeavor would employ 13 employees generating tax revenue on $742,891 in five years of operation and purportedly generating $162,745 in tax revenue. But even though the Petitioner anticipates increasing gross income, a hiring spree increasing their head count, and increasing their expenditures on salary generating tax income, it is not clear from the record as described above how this job creation for the proposed endeavor itself is significant in a manner that would have a substantial prospective positive economic effect commensurate with national importance. The Petitioner's aspirations do not demonstrate the national importance of the endeavor because they, whether realized or not, would not extend beyond the endeavor itself to have an impact on a level of national importance. The record also does not contain sufficient probative, material, or relevant evidence showing how the endeavor's hiring plan would influence the area's unemployment rate or how the endeavor's operations, tax generation, and revenue rose to a level of national importance.

USCIS may, in its discretion, use as advisory opinion statements from universities, professional organization, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id*. Moreover, letters from relevant third-party reviewers such as prospective investors, retailers, or other industry experts will generally be more persuasive to support the merits of an entrepreneur's business, business plan, product, or technology. The Petitioner commissioned letters authored by [redacted] The content of both letters lacks relevance when it comes to the evaluation of whether the Petitioner's business and services rise to the level of national importance.

For example, in addressing the national importance of the Petitioner's endeavor, both letters discussed the general benefit to the United States of having financially sound and responsible businesses operating in the economy. However, aside from overarching statements that the Petitioner's endeavor would operate in this field, the letters did not specifically identify how the provision of services from the Petitioner's proposed endeavor would impact the financial health and responsible business practices of United States companies in a manner implicating matters of national importance or what broader implications emanate therefrom. Instead, the letters overwhelmingly discussed the importance of the Petitioner's industry and occupation as well as the Petitioner's previous experiences. But this does not relate or correspond to the national importance of the Petitioner's proposed endeavor. So, the letters do not provide any meaningful analysis of the endeavor's broader implications or potential prospective economic impact rising to the level of national importance.

Additionally, the opinion authored by [redacted] refers to the "unique strategies" in "the business and finance sector" the Petitioner would employ by and through their proposed endeavor. But [redacted] does not specifically identify the strategies, explain how they are "unique," or shed any light on how they influence matters globally or nationally, or have other broader implications rising to a level of national importance.

Moreover, the opinion letter authored by [redacted] at one juncture references a "Mr. [redacted] as an "expert" whose work is in the national interest. The writer's conflicting references to the name of the Petitioner in their opinion obscures the identity of the individual the writer is rendering their opinion for. An opinion statement has less weight where there is cause to question or doubt the opinion, or if it is not in accord with other information in the record. *Matter of Caron Int'l*, 19 I&N Dec. at 795. Moreover, doubt cast on any aspect of a petitioner's proof may lead to doubts about the reliability and sufficiency of the remaining evidence in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The Petitioner submitted three letters from individuals who engaged the Petitioner by and through [redacted] In their letters, the writers described the services the Petitioner performed for them and the benefits they realized from the services. Contrary to the Petitioner's assertions, the letters do not shed light on the prospective positive impact of the Petitioner's proposed endeavor beyond the individuals who engaged the Petitioner for their services. The letters do not adequately characterize the national importance of the Petitioner's endeavor either through a demonstration of national or even global impact or identifying broader implications emanating from the proposed endeavor. For example, it is not sufficiently evident how "optimizing operational processes" and "reducing losses" at a single business enterprise would broadly implicate the benefits of financial management in a manner ascending to a level of national importance. And the record does not sufficiently describe the prospective potential impact on matters rising to a level of national importance from the "generation and analysis of management reports for" a restaurant chain. And it is not patent that the Petitioner's "ability to analyze complex data and [their] strategic financial decision-making skills" exert influence on matters rising to a level of national importance either through national or even global implications to the field of financial management or broader implications emanating from their skills at a nationally important level.

So, we conclude that the Petitioner has not established that their proposed endeavor is of national importance.

C. Well Positioned to Advance the Proposed Endeavor

We disagree with the Director and hereby withdraw the Director's conclusion that the record established the Petitioner was well-positioned to advance the proposed endeavor under the second prong of the *Dhanasar* framework. In evaluating whether a petitioner is well positioned to advance their proposed endeavor, we review the following and any other relevant factors:

- A petitioner's education, skill, knowledge, and record of success in related or similar efforts;
- A petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing;
- Any progress towards achieving the proposed endeavor; and
- The interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

It is not clear how an individualized consideration of the multifactorial analysis under *Dhanasar's* second prong would demonstrate how well positioned the Petitioner is to advance their proposed

endeavor. The record as currently constituted would still not reflect how the Petitioner's prior performance of the duties described in the experience letters is either a similar effort as that of their proposed endeavor or how it constitutes a record of success. Whilst the Petitioner submitted a business plan describing a plan or model for future activities, the record does not reflect any progress to achieving the proposed endeavor other than registering their company and operating their business. The establishment and operation of their company alone is not sufficient evidence of progress. Finally, the recommendation letters the Petitioner submitted are not material, relevant, or probative evidence in the record of interest or support in the endeavor the Petitioner proposed in their petition. They are instead effusive statements describing the competent way the Petitioner completed work for which the letter writers engaged the Petitioner. As stated above, a petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. at 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). So, the evidence in the record does not sufficiently describe how well situated the Petitioner would be to advance their petition's proposed endeavor.

III. CONCLUSION

As the Petitioner has not established that they meet the first or second prong of the *Dhanasar* framework, they have not shown that they are eligible for and otherwise merit a national interest waiver, and we reserve this issue. *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). As the Petitioner has not met the requirements of the *Dhanasar* analytical framework, we find that they have not established that they are eligible for or otherwise merit a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.