U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31070165

Date: MAY 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, operations manager, and consultant, 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. *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 attached to this EB-2 immigrant classification. *Id.*

The Director of the Texas Service Center denied the petition, concluding the Petitioner had not established eligibility for 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. 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).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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,[3] 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.

II. ANALYSIS

The Director found the Petitioner established his eligibility for the underlying EB-2 immigrant classification. Therefore, the remaining issue to be determined 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 is an entrepreneur, operations manager, and consultant who proposes to create a consulting, sales advisory, and channel management services company focused on the construction, furniture, home appliances, and school and office supply industries. The Petitioner plans to assist companies in "planning, organizing, measuring, monitoring, and aligning channel presence and sales force effectiveness and efficiency without increasing costs for the company."

The Director determined that the Petitioner's proposed endeavor has substantial merit but not national importance under *Dhanasar*'s first prong.[4] On appeal, the Petitioner asserts that the Director failed to consider, analyze, and weigh all the arguments and evidence and generally did not discuss the evidence in accordance with the *USCIS Policy Manual*.

Upon de novo review, we conclude that the proposed endeavor has substantial merit. However, for the reasons discussed below, we agree with the Director's determination that the Petitioner has not demonstrated his proposed endeavor's national importance and, thus, has not shown he satisfies *Dhanasar*'s first prong.

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[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[3] *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).

[4] The Director also concluded that the Petitioner did not meet *Dhanasar*'s second or third prongs.

The *Dhanasar* analytical framework's first prong, substantial merit and national importance, 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

In his appellate brief, the Petitioner asserts that the Director failed to perform a comprehensive analysis of his proposed endeavor's potential to create jobs for U.S. workers. He claims that the Director's statement regarding the number of potential employees he will hire is "misleading and omit[s] important information." He notes that, while he intends to hire three employees in the first year, he also plans to hire eight employees by the fifth year. The Petitioner contends his endeavor will have a "significant impact" in creating jobs and cites to materials from the Economic Policy Institute (EPI), which state that for every 100 direct jobs in the management, scientific, and technical consulting services industry, 207.6 indirect jobs are generated.

Although the Petitioner contends that the Director's decision fails to assess the broader impact of his proposed endeavor by failing to analyze its potential for generating both direct and indirect employment within the community, the Petitioner has not shown that his company's future staffing levels, business activity, or related tax revenue stand to provide substantial positive economic effects in his area, Florida, or the United States as a whole on a scale commensurate with national importance. In this regard, we note the Petitioner claims that, according to EPI's employment multipliers, if his company creates eight jobs by the fifth year, it would also lead to the creation of 16.608 indirect jobs. But even if we considered the claimed creation of these direct and indirect jobs, we would still conclude that the Petitioner has not adequately explained how these staffing levels and associated economic or social impact would be substantial enough to rise to the level of national importance.

For example, the Petitioner's business plan indicates that he plans to operate in the [redacted] region in Florida. According to the data provided by the Petitioner in his business plan, the region had a population of 2.61 million people in 2019 with approximately 160,615 employees in sales and related occupations, 147,482 employees in management occupations, and 147,399 employees in office and administrative support occupations. The Petitioner has not detailed how the claimed creation of 8 direct jobs and 16.608 indirect jobs by Year 5 demonstrates a significant potential to employ U.S. workers or otherwise shows how his endeavor's potential economic impacts would result in any demonstrable effect on the regional or national economy, even in an economically depressed area. Likewise, he has not demonstrated how his company would be distinct from any other similar, small business operating in the United States such that it would stand to broadly impact the consulting, sales advisory, and channel management services industry, or the U.S economy beyond those clients directly served.

The Petitioner also alleges on appeal that the Director inaccurately stated that the Petitioner discussed his proposed endeavor's impact in an economically depressed area by citing to evidence related to the effect COVID-19 had on different regions within Florida. The Petitioner contends that the evidence instead demonstrated that the zip code he plans to operate in is the most distressed zip code in Central Florida. Contrary to the Petitioner's claim, however, a review of the record reveals the evidence references COVID-19's impacts on business and employment in Florida. For example, in the Petitioner's response to the Director's request for evidence, under the section "Significant potential to

employ U.S. workers or ha[ve] other substantial positive economic effects, particularly in an economically depressed area," he cites to evidence which discusses, in part, the role small businesses played in job growth following the COVID-19 recession. Additionally, in his business plan, under the section "Positive business impacts for an economically depressed area," the Petitioner discusses the effects of COVID-19 on the unemployment rates in the United States and Florida and contends his endeavor will "positively affect and bring substantial economic benefits to the mildly depressed State of Florida." We also note that, despite his claims that the Director made an inaccurate statement in the decision, the Petitioner has not specifically explained how any alleged error impacted the Director's findings or shown how the evidence, in fact, demonstrates his proposed endeavor would have a significant impact in the area.

We are also unpersuaded by the Petitioner's claim that the Director failed to follow the guidance in the *USCIS Policy Manual* in rendering her decision. The Petitioner claims the Director did not comprehensively review and consider the totality of evidence and so did not cover all grounds for the denial. He argues that this "incomplete examination" led to an inaccurate finding of fact which led to a wrongful denial. However, aside from the Petitioner's claims, which we addressed above, he has not detailed what specific inaccurate findings of fact were made or what other grounds for denial were not covered in the Director's decision. A review of the record shows the Director considered and analyzed the evidence submitted. Without further elaboration on appeal, we cannot find otherwise based on the evidence before us.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. Because the record does not establish the national importance of his proposed endeavor as required by *Dhanasar*'s first prong, the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining issues and arguments concerning whether he has established eligibility for the underlying EB-2 classification, as well as eligibility under the remaining two *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule 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).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We, therefore, conclude that the Petitioner has not established that he is eligible for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.