U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31261073

Date: MAY 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a consultant in the tourism industry, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category – and thus related requirements for certifications from the U.S. Department of Labor (DOL) – if petitioners demonstrate that waivers of these U.S.-worker protections would be "in the national interest." *Id.; see also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (holding that decisions on national interest waiver requests are discretionary).

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner demonstrated neither his eligibility for EB-2 classification nor the merits of his national interest waiver request. On appeal, the Petitioner contends that the Director made both legal and factual errors.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he has established his EB-2 eligibility. But we agree with the Director that the Petitioner has not demonstrated the claimed "national importance" of his proposed endeavor. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the EB-2 category, either as members of the professions holding "advanced degrees" or noncitizens of "exceptional ability" in the sciences, arts, or business. *See* section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this immigrant visa category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor certification requirements by demonstrating that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. 884, 889-91 (AAO 2016).

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Mexican native and citizen, earned a bachelor of economics degree in his home country. He then gained more than 25 years of experience as a business consultant, including 13 years as a business owner, chief executive officer, and consultant in the tourism industry.

The Petitioner proposes to operate a U.S. business providing consulting services to tourism development projects in rural areas. He previously developed a successful hotel in a rural part of Mexico. To advance his proposed U.S. endeavor, the Petitioner has acquired a U.S. limited liability company. He contends that his business would "creat[e] a cascade of economic and cultural benefits" to U.S. rural areas.

B. EB-2 Eligibility

The Petitioner seeks EB-2 eligibility as an advanced degree professional. He claims possession of a foreign degree equivalent to a U.S. bachelor's degree followed by more than five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

We agree with the Director that the Petitioner has demonstrated his possession of the foreign equivalent of a U.S. bachelor's degree in economics. He provided copies of his four-year *licenciado en economia*, a university certificate of studies, and a professional, independent evaluation equating the Mexican credential to a U.S. baccalaureate in economics.

To prove qualifying experience, a petitioner must submit letters from former employers stating their names, titles, and addresses, and describing the noncitizen's experience. 8 C.F.R. § 204.5(g)(1). The Director concluded that the Petitioner's employment letters did not comply with the regulation.

The Director, however, overlooked a letter in the original filing from a former employer of the Petitioner. The letter confirms his post-baccalaureate employment as a business consultant in Mexico for more than six years. In response to the Director's request for additional evidence, the Petitioner submitted letters from other employers and, on appeal, provides more evidence. But we need not consider these later documents. The letter in the original filing complies with regulatory requirements

and sufficiently demonstrates the Petitioner's possession of at least five years of progressive, post-baccalaureate experience in business consulting. Thus, contrary to the Director's decision, the Petitioner has established his qualifications for the EB-2 category as an advanced degree professional.

C. Substantial Merit

We agree with the Director that the Petitioner has demonstrated that his proposed endeavor has substantial merit. A proposed venture may have substantial merit if it "has the potential to create a significant economic impact" or relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner provided evidence that his proposed consultancy could potentially provide jobs and other economic benefits to U.S. rural areas. He has therefore established that his proposed venture has substantial merit.

D. National Importance

When determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "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.*

The Director found insufficient evidence that the benefits of the Petitioner's proposed venture would extend beyond his business and clients to more broadly affect the national economy or the U.S. tourism industry. The Director stated: "The petitioner has not established that their proposed work has implications beyond their current company (or any prospective employers), businesses partners, alliances, and/or unidentified clients at a level sufficient to demonstrate the national importance of their endeavor."

On appeal, the Petitioner notes that the Director disregarded his submission of an independent economic impact study of the proposed endeavor. Assuming that the Petitioner's business would handle five average-sized tourism projects a year, the study estimates that, after five operating years, the projects would have a total annual economic impact – including not only tourists' direct spending but also indirect and induced impacts – of $254.7 million, with the creation of 978 permanent jobs. A letter from the principal of the firm that prepared the study states: "[C]onsulting firms with expertise in hospitality and rural development can play an important role in fostering economic growth and employment generation in rural communities."

The study, however, does not demonstrate that the Petitioner's proposed business would substantially affect the national economy. The evidence indicates that the projects would generate an economic impact of $254.7 million *a year*. But the Petitioner provided information from the federal government indicating that – in 2019, before the COVID-19 pandemic – foreign tourism to the United States generated $640 million *a day*. *See* U.S. Int'l Trade Admin. (ITA), "Travel and Tourism," www.trade.gov/travel-tourism-industry. Thus, the study indicates that the Petitioner's business would

constitute only a tiny fraction of the U.S. tourism industry and the national economy. Also, the Petitioner has not provided sufficient economic or employment information about the areas where the projects would be located. He therefore has not demonstrated that the projects would help economically depressed areas. Further, the record does not establish that his consulting services would deserve credit for all the projects' purported economic benefits.

The Petitioner argues that his proposed endeavor aligns with U.S. tourism goals. In 2019, about 80 million international visitors came to the United States, spending about $240 billion. U.S. Dep't of Commerce, ITA, *ITA National Travel and Tourism Strategy 2022*, 3, www.commerce.gov/sites/default/files/2022-06/National-Travel-Tourism-Strategy.pdf. By 2027, the U.S. government seeks to attract 90 million international visitors a year, annually spending $279 billion. *Id.* at 5.

The Petitioner also notes his submission of recommendation letters from executives and government officials in the business consulting and tourism industries. Two letters are from officials of an EB-5 Regional Center, which develops projects for pooled foreign investments that can lead to immigrant visas for individual investors. *See* section 203(b)(5) of the Act (making visas available for immigrants engaging in "new commercial enterprises"). The Petitioner also submitted evidence that he has agreed to provide consulting services to the Regional Center. One of the center's letters states:

> [W]ithout the expert strategic consulting services of [the Petitioner], the successful development of Rural Tourism EB-5 projects for [the Regional Center] would be seriously jeopardized and the opportunity to bring economic growth and jobs to [targeted employment areas] could be lost. Rural Tourism is a niche industry, and the development of successful tourism projects requires a high degree of specialization and know-how which are not easy to find.

The consulting agreement between the Petitioner and the Regional Center, however, postdates the petition's filing. A petitioner must establish eligibility "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1). Thus, although the center letters may retain evidentiary value for other purposes, we cannot consider the Petitioner's proposed endeavor to include his consulting services to the center.

The Petitioner's proposed venture has substantial merit. But we ultimately agree with the Director: The Petitioner has not demonstrated that his proposed business would potentially affect the economy or tourism industry at a nationally important level. The Petitioner's proposal resembles one that we considered in *Dhanasar*. There, the petitioner proposed teaching U.S. university students in science, technology, engineering, and mathematics (STEM) disciplines. *Matter of Dhanasar*, 26 I&N Dec. at 893. We concluded that the proposed venture had substantial merit. *Id.* The proposal also aligned with U.S. government policy and initiatives. *See generally* 6 *USCIS Policy Manual* F.(5)(D)(2), www.uscis.gov/policy-manual (recognizing the importance of STEM knowledge to U.S. competitiveness and national security). But we found insufficient evidence of the endeavor's purported national importance because "the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." *Id.*

Like the petitioner in *Dhanasar*, the Petitioner's proposed venture has substantial merit and aligns with government policy and initiatives. But, also like that petitioner, he has not sufficiently demonstrated that his proposed consultancy would affect the national economy or the U.S. tourism industry "more broadly." Because the Petitioner has not established that his proposed endeavor has national importance, we will affirm the petition's denial.

E. Remaining Issues

Our decision regarding the national importance of the Petitioner's proposed venture resolves this appeal. Thus, we decline to reach and hereby reserve consideration of his appellate arguments about his positioning to advance the venture and a waiver's benefits to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate appellate issues where a noncitizen did not otherwise qualify for relief).

III. CONCLUSION

The Petitioner has not demonstrated that his proposed endeavor has national importance. Thus, under our framework, he does not qualify for a national interest waiver. We will therefore affirm the petition's denial for lack of a job offer and labor certification.

ORDER: The appeal is dismissed.