U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30627427

Date: MAY 31, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish his eligibility for EB-2 classification, or 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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 (AAO 2016), provides the framework

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,[2] 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.

Id. at 889.

II. ANALYSIS

A. EB-2 Classification

The Director concluded the Petitioner did not establish his eligibility for EB-2 classification as an advanced degree professional because the work experience letters he provided did not list the duties he performed, thus, it could not be determined if his post-graduate work experience is sufficient to qualify under 8 C.F.R. § 204.5(k)(2). Because we are dismissing this appeal on the dispositive issue explained below, we reserve our review of the Director's conclusion regarding the Petitioner's eligibility for EB-2 classification and the Petitioner's appellate arguments regarding the same. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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).

B. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." *Id.* at 889. 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. *Id.* The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. As such, we will first identify the Petitioner's endeavor as shown in the record. Then, we will evaluate the Petitioner's evidence in support of the endeavor's substantial merit and national importance.

[2] *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 is discretionary in nature).

The Petitioner asserts that he will serve as project manager in his own business, [redacted] [redacted](the Company), located in [redacted] Florida.[3] The purpose of the Company is to provide assets and property management to small and medium sized businesses. As an example of his endeavor, the Petitioner provides a contract between the Company and another entity for services. The other entity is described as a well-established company that manages over 55 properties in various locations in Florida. For this entity and others, the Petitioner asserts he will develop an "active consulting model focused on managing clients' assets and all the associated variables to improve the efficiency of services offered."

In the "National Importance" section of his personal statement, the Petitioner explains that the field of asset management improves the performance of organizations, which positively impacts investment decisions, thus growing the economy. As a project manager for his own company, he intends to manage "functional assets such as machinery and equipment that are part of the general infrastructure in any development" and claims that by doing so, he will reduce costs, extend the "useful life" of this equipment and assets, and improve the return on investments. He also asserts that his proposed endeavor is aligned with USCIS's STEM policy because he will use his expertise in engineering and project management to succeed in this proposed endeavor. The Petitioner's evidence establishes that he has incorporated the Company under the laws of Florida.

To highlight the importance of investments, the Petitioner points to the National Association of Real Estate Investment Managers' 2022 defined contribution survey results, which found that $80 billion are invested in private real estate, and that new investors account for 40% of "net inflows into their 2021 funds." He maintains that his proposed endeavor to work as an asset and investment manager is crucial to maintaining profitability of real estate investments, which is important to the health of the economy. As evidence of the potential impact his proposed endeavor may have, he explains that a company he currently works for, which has operations throughout Latin America, grew 60% in the last six years and went from having 16 to 33 real estate projects by close of 2021, over which he "oversaw their inspection, monitoring, and control." He concludes that with his combination of professional experience, business know-how, and technical skills, developed over his more than 20-year career, he will be an asset to the United States.

In response to the Director's request for evidence, the Petitioner submitted a business plan, in which he explains our economy's growing need for asset and project management services among small and medium-sized enterprises due to the unique challenges these organizations face. He explains that many of these companies lack in house resources and the expertise to handle complex asset and project management planning and that without this expertise, these companies suffer from long-term sustainability risks. His plan also asserts that these risks threaten to harm the overall economy because job creation is important and because it is linked to growth in the small and middle-sized business sectors. His business plan notes that Florida is an ideal location for his proposed endeavor because the state has many small and medium-sized businesses, and he will primarily target those businesses in the real estate, construction, transportation and warehousing, and manufacturing sectors. His plan further maintains the national importance of his endeavor is linked to the success of the businesses he

[3] We note that while we may not discuss every document submitted by the Petitioner, we have reviewed and considered each one.

will provide project management services to, and the improved tax revenues, and domestic employment opportunities that will come from the success of these businesses.

The Petitioner's business plan maintains the Company will hire a sales representative, a community manager, 12 maintenance technicians, three property managers, an administrative assistant, an accountant, nine internal control analysts, and nine operations assistants by the year 2028, for a total of 44 direct employees (and 16 indirect hires) by the Company's fifth year of operations. It also notes that by its fifth year, the Company will generate $2,030,077 in payroll expenses, $3,517,500 in total sales, $781,448 in net profit, and have a net worth of $2,422,743. Elsewhere in the record, he explains that national initiatives promoted by the Federal Project Management Improvement Act, the Office of Management and Budget, the Federal Acquisition Regulations, the General Services Administration – Public Buildings Service, and the Department of Defense's Defense Acquisition System, are aligned with his endeavor because these initiatives acknowledge the national importance that project and asset management play in government, which supports his endeavor's national importance. As such, he asserts that the field of project and asset management represents principles and practices that are important across multiple sectors. Finally, he maintains that his endeavor contributes to the goals of the Interim National Security Strategic Guidance which seeks to expand economic prosperity and opportunity.

As the endeavor's merit may be demonstrated in a range of areas, we agree with the Director that the endeavor has substantial merit. *Id.* However, as discussed below, the Petitioner has not established that his proposed endeavor is of national importance.

On appeal, the Petitioner provides a brief and asserts the Director ignored evidence including the Petitioner's business plan, personal statement, and the opinion letter provided by a professor. However, the Petitioner's allegation lacks factual specificity. *See Onyenanu v. Garland*, 2024 WL 184254 (U.S. District Court, Tampa, Florida) (finding that an appellant bears the burden of supporting their allegations against USCIS with "factual specificity"). Here, the Director's decision addressed the deficiencies in the professor's opinion letter and quoted directly from the Petitioner's documents. Furthermore, the Director directly quoted the description of the Petitioner's proposed endeavor as found in his petition cover letter. While the decision did not specifically mention the Petitioner's personal statement, and business plan, on appeal, the Petitioner does not explain how the Director's failure to mention these documents caused legal or factual error to his detriment. The personal statement and the business plan speak to the Petitioner's proposed endeavor and its purported national importance, which the Director addressed in their decision. Furthermore, it is not the quantity of the evidence but the quality of the evidence that will establish the Petitioner's burden, and the Petitioner has not explained with sufficient detail how the Director's decision failed to consider the quality of the evidence presented other than stating that "[a]n in-totality analysis of both the quantum and quality of the evidence presented established [the Petitioner]'s national importance would reasonably lead to a conclusion that, by a preponderance of the evidence, she [sic] complies with the prongs stated in [*Dhanasar*] . . .." As such, the Petitioner's allegations that the Director failed to consider evidence lacks factual specificity.

Upon de novo review, we acknowledge that the Petitioner's proposed endeavor has positive objectives, and while these assertions underscore the substantial merit of his endeavor, they do not establish that the Company's services have a potential prospective impact beyond the individual businesses to which

he will provide services. We further note that his assertions with respect to the shortage of project management professionals in the United States, like him, does not render his proposed endeavor nationally important under the *Dhanasar* framework because the U.S. Department of Labor directly addresses these shortages through the labor certification process. Finally, while the recommendation letters he submitted show that he has a professional network that holds him in high regard and has strong belief in his abilities to succeed in his proposed endeavor, this evidence would be relevant to our analysis under *Dhanasar's* second prong, where we consider whether the Petitioner is well-positioned to advance the proposed endeavor but does not relate to its national importance.

The business plan provided contains a section, "the Petitioner's National-Level Impact," which outlines how his professional experience, education, and expertise in asset and project management, will provide benefits to the U.S. economy. However, as above, we note that these factors are relevant to our analysis under *Dhanasar's* second prong, but do not establish the endeavor's national importance. The remainder of this section highlights the Company's services (strategic alignment with objectives, efficient asset management, regular inspections and audits, and risk management and compliance), however these descriptions would go to the substantial merit of the endeavor, but not its national importance. He includes a section, "Positive Impact on the U.S. Economy," where he summarizes the importance of small and medium-sized businesses to the U.S. economy, and how his endeavor aims to help these businesses maximize profits, create jobs, and increase GDP and tax revenue, making the United States more globally competitive and economically stable. We acknowledge the Petitioner's foregoing assertions and applaud his commitment to employ his entrepreneurial drive to assist small and medium sized businesses in the United States. He further asserts that he will ensure compliance with regulatory and industry standards, which will lead businesses to adopt best practices and avoid legal and security issues. And he claims to be eager to share his expertise, which will help the United States manage the shortage of talent in his field, and that being an immigrant entrepreneur will help create jobs for native-born Americans, thereby strengthening the U.S.'s social fabric. These are all laudable goals. However, the Petitioner has not submitted independent evidence supporting these claims and assertions, and without more, there is insufficient evidence to conclude that his endeavor is of national importance. *See, e.g.*, *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (noting that "statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). In this regard, we note that the letters he provided from potential clients lack critical details which could permit us to determine the national importance of his endeavor. For instance, a letter dated July 2023 from [redacted] confirms he has been working with them since July 2023, and performing the role of asset and project manager, and lists his responsibilities, however it does not indicate or explain how his services have national importance. Likewise, another letter dated May 2023 from [redacted] expresses their interest in working with the Petitioner's company. However, this letter provides vague details regarding the nature of their engagement with the Petitioner, and only lists three bullet points of the duties he will perform for them. As such, while these letters speak to the Petitioner's ability to assist these clients, they do not establish the national importance of his endeavor. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (standing for the proposition that a petitioner must support their assertions with relevant, probative, and credible evidence).

An assistant professor of professional practice at [redacted] and adjunct associate professor of business at [redacted] provides an opinion letter in which he asserts the Petitioner's endeavor is of national importance. However, this opinion is not sufficient to meet his burden. At the beginning

of the letter, the professor states "[h]aving reviewed the Curriculum Vitae, academic credentials, and reference letters, it is my opinion that the weight of the evidence favors granting [the Petitioner's] National Interest Waiver because he satisfies the three-prong test outlined in [*Dhanasar*] . . .." Because the opinion is solely based on information provided by the Petitioner, it does not contain sufficient objective evidence to establish the Petitioner's burden. Thus, we agree with the Director that the opinion letter "restates claims made by the [P]etitioner in the cover letter and business proposal without providing independent supporting evidence." As such, although the professor asserts that the endeavor has national implications in the field, the opinion is of limited probative value. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (standing for the proposition that we may, in our discretion, use opinion statements submitted by a petitioner as advisory but, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that opinion); *see also Matter of Chawathe*, 25 I&N Dec. at 375-76. Furthermore, the writer uses reports from social science journals to assert the national importance of the Petitioner's endeavor because it is a high skilled job with potential to relieve a labor shortage in the global information-based economy and the importance of project management services to businesses. We note however, that under the *Dhanasar* framework, merely working in an important field is insufficient to establish an endeavor's national importance. For example, in *Dhanasar*, we determined that a STEM teacher's proposed endeavor had substantial merit, but that the record did not establish his teaching activities would impact the field of education more broadly. *Id.* at 893. Similarly, while the Petitioner's skillset may be valuable to his clients, the evidence does not establish that his endeavor will impact the field of project management or U.S. economy more broadly. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Petitioner also relies on industry reports and articles concerning such topics as the importance of immigrant entrepreneurship to economic growth and American competitiveness, the importance of operations management in business, and the importance of small businesses as a driver for U.S. economic growth. However, while the information provides a context for some of his assertions, they do not *specifically* discuss the Petitioner's proposed endeavor or explain how his endeavor would have broader implications. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In determining whether the proposed endeavor has national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Dhanasar,* I&N Dec. at 889.

Regarding the Petitioner's assertion that his proposed endeavor aligns with USCIS's STEM policy, we note that many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. *Id.* at 890. In this case, the record does not suggest that the Petitioner intends to advance STEM technologies and research. While the Petitioner will likely offer asset and project management services to his clients, he has not established how the Company would affect STEM employment levels in his industry or the U.S. economy more broadly consistent with national importance, as required under *Dhanasar*. *Id.* at 893.

As contemplated by *Dhanasar*, we examine the record to determine if there is sufficient evidence to conclude the Petitioner's "undertaking may have national importance . . . 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.* Here, the Petitioner has not submitted evidence supporting the assertion that as an asset and project manager, his endeavor will alter or improve upon similar services already available and in use in the United States.

We also explained 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 . . . may well be understood to have national importance." *Id.* at 890. We acknowledge that the Petitioner's business plan projects the creation of numerous jobs, revenue, taxes paid, and increases in investments by its fifth year of operation, however his business plan does not sufficiently detail the basis for the revenue and staffing projections, nor does it adequately explain how the revenue and staffing projections will be realized. *Matter of Chaw*athe, 25 I&N Dec. at 376. As such, without more, he has not established that his endeavor will have substantial positive economic effects at a level commensurate with national importance.

In sum, the Petitioner has not established that his proposed endeavor stands to sufficiently extend beyond his clients to impact his field more broadly at a level commensurate with national importance. Nor has he shown that the work he proposes to undertake offers original innovations that contribute to advancements or otherwise has broader implications for his field. Furthermore, the Petitioner has not demonstrated that his specific endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation directly attributable to his work, the Petitioner has not established that benefits to the regional or national economy resulting from his endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

C. *Dhanasar*'s Second and Third Prongs

As the Petitioner has not established the national importance of his proposed endeavor, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not established the national importance of his proposed endeavor, and consequently that a waiver of the job offer and labor certification process, in the exercise of our discretion, is in the national interest.

ORDER: The appeal is dismissed.