U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34867958

Date: NOV. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an investment principal, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional or a person of exceptional ability, as well as a discretionary 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 although the Petitioner qualifies for the EB-2 classification as an advanced degree professional, the record did not establish that a waiver of the required job offer, and thus labor certification, would be in the national interest. This matter is now before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner bears the burden of establishing his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

I. LAW

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions, which states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts in holding that USCIS' decision on a national interest waiver is discretionary in nature).

II. ANALYSIS

The Director found, and the record (including evidence of a U.S. master of business administration (MBA) degree from [redacted] and school transcript) shows, that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional. 8 C.F.R. §§ 204.5(k)(1)-(2), (k)(3)(i)(A).

The remaining issue on appeal is whether he warrants a national interest waiver under the *Dhanasar* framework and its requisite three prongs, any one of which is dispositive. *Dhanasar*'s first prong, substantial merit and national importance, focuses on the specific endeavor he proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In assessing whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The Director determined that although the Petitioner's proposed endeavor has substantial merit, the evidence did not show that it has national importance and thus he did not meet *Dhanasar*'s first prong.[2] On appeal, the Petitioner does not submit any new evidence but reiterates his eligibility for a discretionary national interest waiver, and alleges that the Director failed to consider all relevant evidence and properly apply the *Dhanasar* framework. We conclude that the record does not demonstrate that the Petitioner's proposed endeavor has national importance.[3]

The Petitioner obtained an MBA degree in May 2022 and started working for a U.S. venture capital firm in September 2023 as an investment principal on an Optional Practical Training status authorizing employment based on completion of his studies in a relevant designated field, which he explains will expire in June 2025. The Petitioner intends to continue to work as an investment principal for the company with a focus in emerging artificial intelligence (AI) companies and, as stated in a brief submitted below, plans to "leverage his unique venture capital investment analysis skills to identify and propel emerging technology enterprises that exhibit strong potentials for growth, and are overall significant drivers of innovation, job creation, and global economic development."[4]

Although the proposed endeavor as an investment principal as described has merit, the evidence does not show that it would have significant potential to employ U.S. workers, have substantial positive economic impact in this country, broadly impact the industry on national or global level beyond his employer and its prospective investees and their enterprises, or otherwise have broader economic or societal implications rising to the level of national importance. *Dhanasar*, 26 I&N Dec. at 889-890.

In determining whether the proposed endeavor has national importance, we consider and look for evidence of the endeavor's potential prospective impact. *Id.* And under the applicable preponderance of the evidence standard, we consider not only the quantity, but also the quality (including relevance

[2] The Director also determined that the record evidence did not satisfy *Dhanasar*'s second and third prongs.

[3] The Petitioner asserts on appeal that the Director found that his proposed endeavor has national importance, referring to the last sentence of the denial on this issue (on page 4). However, that sentence was an inadvertent typographical error, considering the overall language of the denial (and request for evidence), which unequivocally stated that he did not meet *any* of the *Dhanasar* prongs, *including* the national importance prong, and also clearly provided related analysis. Even if, though doubtful, the Director inexplicably meant to ultimately find the record somehow satisfied this prong, we conclude otherwise, upon de novo review, in part for reasons stated in the denial on this issue and as further discussed below.

[4] The Petitioner did not submit his own statement.

and probative value) of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In reasserting that his proposed endeavor has national importance, the Petitioner relies on his academic credentials and experience as an investment principal, as indicated in part in his resume, various support letters, and the general industry articles noting the significance of the investment and small business industries. He reiterates that, given his background and expertise, which he claims well qualifies him as an early-stage venture capital investment principal, and the industry's demand for highly qualified individuals like himself, his proposed endeavor will have substantial positive economic and societal impact. But the above evidence and assertions focus on the Petitioner's experience, skills, and the value of his profession, and relates to *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national" and whether they are "well positioned" to advance their endeavor. *Dhanasar*, 26 I&N Dec. at 890.

For assessing the national importance of a proposed endeavor under *Dhanasar*'s first prong, we look to its "potential prospective impact" and evaluate whether the specific endeavor the Petitioner proposes to undertake has broader national significance, rather than the importance of his profession or industry in which he proposes to engage. *Id.* at 889. Here, he proposes to continue to work as an investment principal of a U.S. investment company that focuses on emerging technology companies and successfully manage assigned investment portfolios and carry out related duties (as indicated in part in his company's job description for his position he provided), including allocating or deploying designated company funds, vetting, due diligence, execution, closing deals, as well as building and maintaining network that will benefit and algin with his company's priorities. He also intends to utilize his business acumen and investment skills in identifying startups that may have strong growth potential and will likely drive innovation, job creation, and economic activities, and deploy company investment funds accordingly. He further continues to emphasize, as indicated in his briefs as well as support letters, his "pioneering investment strategies" that he and his colleagues claim will "significantly advance the industry by perpetrating a culture of innovative investment strategies." However, the Petitioner does not specifically claim, and the record does not contain any objective evidence, that he himself has developed innovative investment strategies or novel methodologies, and, if he did, they were or would be recognized or adopted by the investment industry in this country or otherwise have far-reaching implications. Although we acknowledge that the proposed endeavor could have a positive impact on his career, his employer, and its clients, he has not persuasively explained, and the record (primarily including his briefs, support letters, and the general industry reports) does not show how his proposed work as a company investor would have the national or global implications for the U.S. industry as he claims, beyond his employer and its potential investees.

The Petitioner does not claim that as an investment principal, he himself will employee U.S. workers or that his position with his employer will directly result in the company's hiring of U.S. workers. Moreover, he does not specify, and the record lacks independent evidence as to, how his proposed work for the company otherwise stands to impact U.S. economy or benefit economically depressed areas. *Dhanasar*, 26 I&N Dec. at 890 (holding that proposed endeavors that have "significant potential to employ U.S. workers" or "substantial positive economic effects, particularly in an economically depressed area" may indicate national importance). He does not claim, for instance, and the record contains no evidence, that his work as a principal investor has directly benefited or will specifically benefit any economically depressed area. Other than generally asserting that he has managed and "effectively deploy[ed]" his company's $140 million investment portfolio for small enterprises involved in AI applications and infrastructure, it is unclear how his work as company investor

specifically facilitate and elevate its significance to a national level. He also does not explain or specify, and the record lacks competent evidence as to, the actual or potential impact of his company investment funds he has managed or will manage relative to the (conservatively estimated) multibillion dollar investment industry as a whole. And his general assertions do not provide an objective basis for the claimed indirect impact of deploying company funds to small businesses in the new technology market, which may even be larger than the investment industry. It is further unclear how the industry articles pertaining to small business and AI markets directly evidence or relate to the claimed economic and societal impact of his work as a company investment principal. The record also lacks evidence of any particular interest of significance in the Petitioner's investor work (other than from his employer, its investees, his colleagues, and supporters) that may indicate national or industry-wide importance or set his proposed work apart in a nationally distinguishable manner. He also does not delineate, and the record does not contain specific evidence as to, his future strategy and investment goals and how he will be able to achieve these goals that may in turn inform the claimed future national importance of being a qualified investment principal. Further, he does not claim that he would be able to advance his endeavor independently, unaffiliated with any investment company or entity.

Although he reiterates the large size of his assigned portfolio funds allocated to various startups engaged in fields generally described as important, the record lacks probative evidence that the potential impact of these independent investee-companies, in which the Petitioner's employer has unspecified (and presumably passive) equity stakes simply by virtue of being the investor, would be directly attributable to his proposed endeavor. The importance of other industries that his employer may have a financial stake in thus does not specifically inform the importance of the Petitioner's own proposed work within the company and the investment industry. Therefore, the specific proposed endeavor to work as a principal investor for the company that invests in emerging startup companies for equity stakes does not necessarily demonstrate that his endeavor is inherently nationally important. The evidence of record here does not convince us otherwise.

The Petitioner nonetheless continues to highlight, and we acknowledge, his past accomplishments, high skills, and prestigious MBA degree, as documented in part by the support letters praising his excellent qualifications, professional and local media articles on his recent job appointment, as well as evidence of [redacted] and his firm's reputations and the importance of early-stage AI enterprises. But, as explained, the referenced assertions and documents primarily relate to whether he is well positioned to advance his endeavor under *Dhanasar*'s second prong, rather than its first prong, and thus do not show that his proposed endeavor would have "significant potential to employ U.S. workers" or "substantial positive economic effects, particularly in an economically depressed area." *Id.*

The importance of the proposed endeavor, as noted, is evaluated by its specific prospective impact, not by the importance of the investment industry in which he proposes to engage (or by the importance of other fields his own industry and other entities identify as significant or investment worthy). The purpose of the national interest waiver, therefore, is not to ensure a suitable individual's continued employment or their U.S. job search where there may be job opportunities. Anyone seeking this waiver must show that "the *specific* endeavor" they propose to undertake has national importance. *Dhanasar*, 26 I&N Dec. at 889-890 (emphasis added).

While we acknowledge his desire and willingness to contribute to the U.S. investment industry, the Petitioner has not established with probative evidence that his proposed endeavor to continue working

as a principal investor will specifically further its objectives in a nationally significant manner, have broader implications in his field, have significant potential to employ U.S. workers, or have substantial positive economic or societal effects. The Petitioner has not met *Dhanasar*'s national importance prong and therefore has not established his eligibility for a discretionary national interest waiver.

As the identified ground for denial, the Petitioner's inability to satisfy *Dhanasar*'s first prong is dispositive of this appeal, we do not address here the Director's determinations as to the second and third *Dhanasar* prongs for a national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to reach issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.