U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34949781

Date: NOV. 15, 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 advanced degree professional, 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 although the Petitioner is an advanced degree professional, he did not establish 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. 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." *Id.*

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 for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 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

The Petitioner filed this petition on February 28, 2024. After analyzing the initial evidence, the Director issued a request for evidence (RFE), noting the deficiencies and inconsistencies in the record and provided the Petitioner a non-exhaustive of evidence he could submit to satisfy his burden. The Petitioner timely responded, and the Director denied the petition concluding that although the Petitioner is eligible for EB-2 classification as an advanced degree professional and resolved the noted inconsistencies, he did not establish that a waiver of the job offer, and labor certification requirement, is in the national interest because he did not meet any of the three *Dhanasar* prongs. The Petitioner contests the Director's determination and asserts he meets all three of the *Dhanasar* prongs.

Because a petitioner must establish that they meet all three prongs of the *Dhanasar* framework to obtain a national interest waiver, if even one of the prongs is not established, a petitioner is ineligible for this waiver. Accordingly, we will analyze the Petitioner's evidence under prong one and, as explained below, because he has not established his eligibility under that prong, we decline to reach and hereby reserve the Petitioner's arguments regarding the second and third prongs of the *Dhanasar* framework. *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).

A. Prong One of the *Dhanasar* Framework

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." *Dhanasar*, 26 I&N Dec. at 889. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. 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. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. 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. *Id.* 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.

The Petitioner asserts that he will continue to serve as market research and marketing specialist of his business, [redacted] (the Company), located in [redacted] Florida, with plans to expand into other Florida counties and four additional states (California, New York, Georgia, and Texas) by year five. The Company has been in business since June 2021. The Company provides digital marketing

services in the advertising industry specializing in assisting small and medium sized businesses in the U.S. to enhance their competitiveness through digital marketing using data-driven methodologies and analytics. The Petitioner asserts the Company is part of the growing digital economy, which employs data-driven methodology to elevate digital marketing by helping advertising agencies "to evolve and maintain data analytics as the basis of marketing," which promotes efficiency when supporting small businesses, which are generally more budget-conscious. The Petitioner highlights that his services will focus on converting "relevant organic and paid traffic" on search engines, like Google and Bing (among others). As the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education, 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.

In describing his endeavor's national importance, the Petitioner asserts that the Company has the potential to significantly contribute to the U.S. economy through job creation, economic impact, and business productivity. And he asserts his endeavor aligns with national objectives in support of small businesses and promoting fair competition. Finally, he claims that the significant role marketers play in modern economies establishes the endeavor's national importance because "there is no other department or business function that has a greater impact on a company's revenues than the marketing and business development department."

To support his assertions, the Petitioner relies heavily on industry reports and articles discussing the importance of small businesses, small businesses reliance on digital advertising and the struggle small businesses experience in finding effective and affordable marketing due to the shortage of digital marketers. He also cites to statistics showing that the "role and importance of marketing have grown significantly in an economy where the customer experience is central, and intangible assets make up over 80% of a company's value." We acknowledge the Petitioner's assertions, and the articles he provides, however, while the articles provide 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. *See Matter of Chawathe*, 25 I&N Dec. at 375 (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider the quality, relevance, probative value, and credibility of the evidence). Further, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor, as we explained in *Dhanasar*. *See Matter of Dhanasar*, 26 I&N Dec. at 889. Moreover, because some of the articles concern a labor shortage of marketing professionals in the United States, we note that labor shortages are directly addressed by the U.S. Department of Labor through the labor certification process, thus a labor shortage is insufficient to satisfy his burden. *See Matter of Chawathe*, 25 I&N Dec. at 375. Thus, the Petitioner's national importance assertions are not supported by the articles and industry reports he provides. *Id.*

On appeal, the Petitioner explains that the data he used to calculate economic impact is from the Bureau of Labor Statistics, and that along with his detailed hiring plan that prioritizes veterans, young workers, and disadvantaged minorities, he has met his burden of demonstrating his endeavor's national importance under *Dhanasar*. The Petitioner also emphasizes the social impact that comes with community growth, skills development, and employment. However, as the Director explained, while this evidence demonstrates the substantial merit of his endeavor, it is insufficient to establish that the prospective impact of his endeavor goes beyond his clients and his direct employees. *See Matter of*

Dhanasar, 26 I&N Dec. at 893 (discussing that STEM teaching has substantial merit in relation to U.S. educational interests, but does not necessarily impact the field of STEM education more broadly).

We 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." The Petitioner asserts that by its fifth year of operation, the Company will have future revenues of $2.7 million. The business plan also describes the large size of the advertising industry with "nearly $326 billion in spending supporting over $7 trillion in sales and 28 million jobs in 2020 alone," to assert that marketing is an industry with a large market share of the U.S. economy. The Petitioner's business plan projects that by its fifth year of operation, the Company will create 16 direct jobs, producing over four million dollars in wages. Moreover, the Petitioner asserts his endeavor will lead to 67 indirect jobs based on the Economic Policy Institutes multiplier formula. The Petitioner uses the Regional Input-Output Modeling System - RIMS II to support the numbers underlying the purported economic impact of his endeavor. The Petitioner's RFE response includes charts that show the Company will pay its workers higher than average salaries by years four and five as compared to the greater [redacted] metropolitan area and higher than average salaries for the HUBZone it is located in by year two.

We acknowledge the Petitioner's plan to provide wages that are higher than those of other workers in his geographic area, however the economic impact of higher wages for the Company's employees is inadequate to establish that the economic impact of his endeavor reaches the level of national importance as contemplated by *Dhanasar*. In his RFE response, the Petitioner includes a section that shows the limitations and assumptions underlying his economic impact models. For example, the projections rely on consistent economic conditions, which undermines the probative value of their evidentiary weight. *See Matter of Chawathe*, 25 I&N Dec. at 375. Thus, while the projections are useful to establish the endeavor's substantial merit, we agree with the Director that they do not persuasively establish its national importance because they are based on assumptions. *Id.* Finally, the Petitioner's statistics about the importance of the advertising industry to the U.S. economy is unpersuasive for the reason stated above since merely working in an important field or industry is insufficient to establish an endeavor's national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner indicated that although he is not yet eligible to participate in the HUBZone program, when he obtains legal status, he will do so. The Petitioner's assertions do not satisfy his burden, by a preponderance of the evidence, because as explained above, his economic impact and multiplier data is not adequately supported by material, relevant or probative evidence to establish his endeavor's national importance. *Matter of Chawathe*, 25 I&N Dec. at 376. Further, while it appears that the Petitioner may have intended to equate a designated HUBZone with an "economically depressed area," the record does not support a conclusion that this is an equitable comparison. *Id.*

The Petitioner stresses that because his endeavor concerns the marketing industry in digital platforms, it also aligns with federal government initiatives aimed at maintaining the U.S.'s STEM competitiveness. We acknowledge the importance of STEM technologies and research, whether in academic or industry settings, and while these professions have substantial merit in relation to U.S. science and technology interests, they do not necessarily have sufficiently broad potential implications to demonstrate national importance. *Dhanasar*, 26 I&N Dec. at 890. To the extent the Petitioner is

asserting his endeavor is of national importance because it tangentially utilizes STEM technologies for digital marketing, the record does not show that his work would lead to advancements in STEM innovation or STEM applications at a level commensurate with national importance. *Matter of Chawathe*, 25 I&N Dec. at 376. Moreover, while the Company will offer digital marketing services to its clients, the Petitioner 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. *Id.*

Finally, we acknowledge that the Petitioner provided an expert opinion letter from a marketing consultant in [redacted] Florida. We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id., see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, the letter explains that the Petitioner is a highly regarded digital marketing professional, however it does not support its opinion that his endeavor is of national importance. In addition to describing the Company's purpose and services, the writer asserts that the endeavor is of national importance because it is aligned with national priorities of promoting economic competition, however this statement is conclusory. *Matter of Chawathe*, 25 I&N Dec. at 376. We also reviewed the advisory evaluation provided by an adjunct professor at [redacted] who opines that the Petitioner's endeavor is of national importance. However, because the professor relies on the importance of the field of digital marketing and the shortage of digital marketers to assert the endeavor meets prong one of the *Dhanasar* framework, it is unpersuasive. *Id.* As we explained above, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. And merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889.

B. Other Considerations

On appeal, the Petitioner generally alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law, to [his] detriment . . .." The standard of proof governing immigration benefit requests is "preponderance of evidence." *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met its burden under the preponderance standard, we evaluate whether a petitioner's claims are "more likely than not" or "probably" true, but also consider the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). The Director's RFE explained the deficiencies and concerns in the Petitioner's initial filing and provided a non-exhaustive list of documentation and evidence the Petitioner could submit to address such deficiencies. Therefore, the Director followed the applicable regulations and procedures in adjudicating this petition, and there is no basis to determine the Director held the Petitioner to a higher standard of proof. 8 C.F.R. § 103.2(b)(8). As such, the Petitioner has not met his burden. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

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.