U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34886332

Date: NOV. 18, 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 July 13, 2023. After analyzing the initial evidence, the Director issued a request for evidence (RFE), noting the deficiencies in the record and provided the Petitioner a non-exhaustive list 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, 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 *Dhanasar* prongs. On appeal, the Petitioner contests the Director's determination and asserts he meets all three of the *Dhanasar* prongs.

Upon de novo review, we agree with the Director's determination that the Petitioner qualifies for classification as a member of the professions holding an advanced degree. As such, the only remaining issue is whether the Petitioner's endeavor meets the *Dhanasar* framework for a discretionary national interest waiver.

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." *Matter of 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.*

In concluding that the Petitioner did not establish the substantial merit of his endeavor, the Director determined that the Petitioner's focus is "clearly different" than business and entrepreneurialism. We disagree. In his initial personal statement, the Petitioner explains that his endeavor is to "advance my career in the United States, in the marketing, branding, communication, media, and business fields, working as a Marketing Executive or in a similar high-level position." The Petitioner further explains that he intends to use his experience as a market development executive to assist multimedia companies, marketing agencies, businesses and individuals "looking to expand their businesses in the United States." The Petitioner's statement describing his proposed endeavor, along with additional evidence describing the importance of the marketing field to businesses in the United States, are sufficient to establish his proposed endeavor has substantial merit as contemplated in *Dhanasar*.

In concluding that the Petitioner did not establish his endeavor is of national importance, the Director determined that the Petitioner had not shown that the impact of the proposed endeavor would reach

beyond his "clients at a business where he intends to work." The Director considered the industry reports and articles that the Petitioner submitted to establish the importance of the field of marketing, the value marketing professionals bring to their businesses, and the shortage of marketing professionals. However, the Director concluded that the Petitioner did not satisfy his burden because he "did not offer specific information and evidence to corroborate his assertions that the prospective impact of continuing his work and expanding his knowledge and expertise to companies rises to the level of national importance." The Director also analogized to *Dhanasar* and explained that the Petitioner had not demonstrated that the proposed endeavor has the potential to impact "the regional or national population at a level consistent with having national importance." We agree.

The Petitioner filed this petition to carry out his proposed endeavor of designing and executing multimedia strategies and assisting in the design of custom and integrated multimedia marketing programs to support the growth and goals of businesses. To carry out this endeavor, the Petitioner states he will seek the following positions: 1) an in-house executive role at major multimedia companies, marketing agencies, and businesses with extensive marketing demands; and 2) consulting opportunities on a project-by-project basis. The Petitioner asserts that his endeavor is of national importance because his marketing campaigns will help U.S. companies globalize and localize by making content in different languages, conducting effective marketing research, and hiring local teams to lead international campaigns. He also asserts that his endeavor will generate revenue and job growth, which in turn enhances U.S. competitiveness through business expansion, foreign direct investment, customer engagement, encourage international trade, and promote the survival of small and medium sized enterprises. Finally, the Petitioner describes the importance of marketing and advertising to the business ecosystem to assert his work on marketing and advertising campaigns will influence consumer behavior and create ripple effects through various product and services markets and that it will have significant potential to employ U.S. workers through the economic development of small businesses, and overall improved business performance.

The Petitioner's evidence in support of his endeavor's national importance includes: Two personal statements, media articles and industry reports, letters of support discussing his past achievements and corroborating projections of his future work and contributions, and an expert opinion letter from a professor of marketing in the school of business at [redacted]

Although the Petitioner characterizes the industry reports and articles as demonstrating his endeavor's national importance, as the Director noted, these documents do not corroborate the Petitioner's assertions. *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). Rather, these articles and reports relate to topics such as: the role marketing and branding plays in economic growth and entrepreneurship; international trade; doing business in Brazil; the economy in general; and how the COVID-19 pandemic affected global economies. *Id.* We agree with the Director that in considering national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. As such, while these documents provide a context in which to understand the substantial merit of his endeavor, they do not establish its national importance because they do not specifically discuss the Petitioner's endeavor. *See Matter of Chawathe*, 25 I&N Dec. at 375. Similarly, the expert opinion letter provided discusses the importance of marketing and

advertising as foundational fields to the consumer world.[2] However, this letter speaks to the importance of the marketing and advertising fields but not the Petitioner's actual proposed endeavor as required under prong one of the *Dhanasar* framework. *Id.* And, the Petitioner did not submit sufficient evidence discussing the Petitioner's specific proposed endeavor's potential to impact the U.S. economy, job creation, or U.S. trade interests, or the proposed endeavor's potential to exert broader implications rising to a level of national importance. *Id.* Therefore, the Petitioner's does not satisfy his burden under prong one of the *Dhanasar* framework.

On appeal, the Petitioner asserts that his knowledge and expertise in marketing is relevant and probative to not only our prong two analysis, but also prong one because his "past accomplishments" "corroborate[] projections of his future work in the national interest of promoting business competitiveness, performance, and growth, job and revenue creation, attraction of [foreign direct investment], and the survival and growth of entrepreneurial endeavors." However, as *Dhanasar* makes plain, we consider a petitioner's education, skills, knowledge and record of success in related or similar efforts, among other factors, in our second prong analysis, and the Petitioner provides no relevant support for his assertion that these factors should be considered in our prong one analysis. *See Matter of Dhanasar*, 26 I&N Dec. at 890. Next, the Petitioner asserts the Director misconstrued his contention regarding the labor shortage of professionals working in his field and asserts on appeal that his endeavor addresses a need and demand for marketing services caused by a shortage of qualified people in the field. We note here, however, 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 to demonstrate his endeavor is of national importance. *See Matter of Chawathe*, 25 I&N Dec. at 375. Finally, the Petitioner asserts his evidence corroborates and supports that his endeavor will generate "substantial positive economic effects." However, the Petitioner has not provided sufficient evidence to demonstrate that the impact of his endeavor will lead to such a result. *Id.* In sum, the Petitioner's national importance assertions are not supported by the articles, industry reports, or work experience letters, he provides. *Id.*

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, because the Petitioner has not established his eligibility under prong one, we decline to reach and hereby reserve the Petitioner's arguments regarding the second and third *Dhanasar* prongs. *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).

[2] 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 and 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).

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.