U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34848831

Date: NOV. 27, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Exceptional Ability)

The Petitioner, a sports and exercise physiologist, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 although the record established the Petitioner's qualification as a member of the professions holding an advanced degree, it did not establish 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit 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, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner's proposed endeavor, as described in the personal statement submitted with his petition, is to "perform as a Sports and Exercise Physiologist and provide his specialized services in Health Promotion and Rehabilitation and Sports and Strength Training to impact the field of health and exercise physiology through innovation in the United States;" to "innovate the field of exercise physiology through the implementation of scientific preparation of physical conditioning and rehabilitation programs, accurate diagnosis of clients' needs and conditions, and assistance to individuals with special conditions." The Petitioner further states that in service of his goal to promote health and rehabilitation he will "design and implement exercise programs," "apply stress tests and other evaluation tools," and "develop individualized exercise prescriptions." The Petitioner also indicates that he will provide personal training services and will work with amateur and professional athletes to boost their performance. In a professional plan submitted with his response to the Director's request for evidence (RFE), the Petitioner further indicated that he would also "provide training on themes related to how to prevent and treat chronical [sic] diseases through the implementation of advanced training methodologies."

In denying the petition, the Director concluded that the Petitioner had not demonstrated the substantial merit and the national importance of the proposed endeavor, that he was well positioned to advance the proposed endeavor, and that on balance, waiving the job offer requirement would benefit the United States. The Director therefore determined that the Petitioner had not shown his eligibility for a national interest waiver as a matter of discretion.

On appeal, the Petitioner argues that the record before the Director establishes that his proposed endeavor has both substantial merit and national importance, that he is well positioned to advance his proposed endeavor, and that, on balance, waiving the job offer requirement would benefit the United States. The Petitioner further contends that he has demonstrated that USCIS should grant him a national interest waiver has a matter of discretion.

To establish eligibility for a national interest waiver under the first prong of the *Dhanasar* framework, the Petitioner must establish that his proposed endeavor has both substantial merit and national importance. For the reasons discussed below we conclude that although the Petitioner has shown the substantial merit of his proposed endeavor, he has not sufficiently demonstrated its national importance under the first prong of the *Dhanasar* analytical framework.

[2] The Director therefore did not reach the matter of whether the Petitioner established his eligibility for EB-2 classification as an individual of exceptional ability.

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education.

A. Substantial Merit

The record reflects that there are national initiatives, such as the Centers for Disease Control and Prevention's (CDC) Active People, Healthy Nation program, and the Exercise is Medicine initiative managed by the American College of Sports Medicine, demonstrating the importance of physical exercise in improving health outcomes. The record is therefore sufficient to show, by a preponderance of the evidence, that the Petitioner's proposed endeavor, as outlined in his business plan and personal statement, has substantial merit. We will withdraw the Director's determination to the contrary.

B. National Importance

The Petitioner asserts on appeal that the Director erred in concluding that the proposed endeavor was not of national importance. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Dhanasar*, 26 I&N Dec. at 889. We determined in Dhanasar that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. We also stated 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, for instance, may well be understood to have national importance." *Id.* at 890.

The Petitioner contends on appeal that the national importance of his proposed endeavor is demonstrated by its focus on "improving health outcomes and preventing chronic diseases," which aligns with national initiatives such as the aforementioned CDC initiative and the Obama Administration's "Let's Move!" initiative.[3] While both initiatives indicate the importance of increased physical exercise for the reduction of chronic illness, they focus on assisting communities to implement strategies that will increase exercise and provide support for childhood nutrition. They do not specifically show the government's interest in the Petitioner's proposed endeavor or similar endeavors. In evaluating national importance under the first prong of the *Dhanasar* framework, we will consider evidence demonstrating how a specific proposed endeavor impacts a matter that a government entity has described as having national importance or a matter that is the subject of national initiatives. However, pursuing employment in an area that is adjacent to the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor in that area.

[3] It is unclear from the record whether the Let's Move initiative is still active.

In addition, the Petitioner argues on appeal that the national importance of his proposed endeavor is shown through its positive economic impacts. With his initial petition, the Petitioner included a personal statement indicating that his proposed endeavor would help to reduce healthcare costs "related to low physical activity" and medical expenses "related to obesity" and would "generate economic growth and contribute toward increasing and optimizing the U.S. market." The Petitioner then provided a business plan for [redacted] with his response to the Director's RFE in which he explained that he has established [redacted], PA and has invested $50,000 into the endeavor.[4] According to this business plan, the focus of his proposed endeavor would be the expansion of this business into [redacted] and New Jersey… not only providing high-standard health services but also contributing to local and national employment rates." The business plan anticipates that the proposed endeavor would employ 6 people in 2025, 10 in 2026, 13 in 2027, and 16 in 2028, and 20 in 2029; it also anticipated that the proposed endeavor would generate revenues totaling $265,000 in 2025, $720,000 in 2026, $870,000 in 2027, $2,000,000 in 2028, and $3,600,000 in 2029. Here, the Petitioner has not offered evidence to demonstrate that his company's future staffing levels or revenues stand to provide substantial economic benefits in [redacted] PA and [redacted], PA, and in New Jersey. While the projected jobs and revenues forecast for the proposed endeavor indicate that the company has growth potential, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Matter of Dhanasar,* 26 I&N Dec. at 890.

The Petitioner also argues that his expansion plan for the proposed endeavor "which includes opening new facilities across key locations in the United States … stimulates local economies and job markets." The business plan similarly indicates that the Petitioner's strategy is "to establish new fitness centers every three years" and that [t]he decision to provide accessible fitness services in economically disadvantaged areas will particularly serve as a catalyst for economic revitalization." In *Dhanasar* we stated 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, for instance, may well be understood to have national importance." *Id.* However, the Petitioner does not offer evidence to demonstrate that the areas of [redacted], or New Jersey in which the proposed endeavor intends to operate are economically disadvantaged areas. Further, he has not provided evidence demonstrating that his proposed business activities would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. While any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of his proposed endeavor stands to offer broader implications in his industry or to generate substantial positive economic effects in the United States as a whole.

The Petitioner asserts that the national importance of the proposed endeavor is shown in its "profound" societal benefits. He points to his "commitment to inclusivity and accessibility in fitness programs" and his integration of "mental health considerations into physical fitness regimes" in support of this assertion. We acknowledge the Petitioner's arguments regarding the importance of providing inclusive and accessible physical fitness programs. However, the Petitioner has not submitted

[4] We note that the record lacks business formation documents for this business or evidence of this investment.

sufficient evidence to demonstrate how his proposed endeavor's impact would extend beyond his workplace and clients to the broader field of sports and exercise physiology.

The Petitioner also contends that the proposed endeavor's national importance is shown through its "power to enhance military operational efficiency and support national defense preparedness." However the record lacks sufficient evidence to support this contention. The Petitioner notes that correspondence in the record from a U.S. Army veteran endorsing him "underscores the tangible benefits of his specialized fitness programs within critical sectors such as military readiness." We note, however, that this letter generally highlights the Petitioner's skills and professional knowledge and the benefits that the author derived from them. The Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of her proposed work. Moreover, as stated above, the record lacks evidence sufficient to demonstrate how his proposed endeavor would extend beyond his clients and business to the broader field of sports and exercise physiology.

In summary, although the Petitioner has established the substantial merit of the proposed endeavor, he has not demonstrated its national importance. The Petitioner has therefore not met the requisite first prong of the *Dhanasar* analytical framework. As the Petitioner has not met this requisite first prong, we conclude that he has not provided adequate reasons or evidence on appeal to overcome the Director's determination that he is eligible for a national interest waiver as a matter of discretion. Since this basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue concerning his eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The documentation in the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.