U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33950210

Date: OCT. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a lawyer,[1] seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 was eligible for the EB-2 classification as an advanced degree professional, he did not establish that a waiver of the job offer requirement would be in the national interest. The matter is now before us on appeal.

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 EB-2 immigrant 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.

Once the 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,[2] grant a national interest waiver if the petitioner demonstrates that:

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[1] The terms lawyer and attorney are used interchangeably throughout the record.

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third

- 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.

II. ANALYSIS

The Director determined that the Petitioner qualified for the EB-2 classification as an advanced degree professional, and the record supports this determination.[3] The Director also found that the Petitioner's proposed endeavor had substantial merit. The remaining issues, therefore, are whether the Petitioner has established that his endeavor has national importance and, if so, whether he is well-positioned to advance it and whether, on balance, waiving the job requirement in his case would benefit the United States.

Upon review, we conclude that the Petitioner has not met his burden of proof to establish that his proposed endeavor has national importance. Because he is ineligible for a national interest waiver on that basis alone, we will not address whether he meets the other two *Dhanasar* prongs.

The Petitioner initially indicated that his proposed endeavor is to work as a lawyer in [redacted] New Jersey. In response to the Director's request for evidence (RFE), the Petitioner elaborated on his proposed endeavor in his May 2023 Business Plan as follows:

> [redacted] will establish a bilateral service relationship, performing legal services in many matters such as real estate law, property law, intellectual property law, commercial law, company law, citizenship law to individuals and companies who want to establish a company, invest, apply to government incentives, apply for intellectual property rights, obtain citizenship, in addition to investment advice, serving both Turkey, the US and other countries that need services.

The Director determined that the Petitioner did not establish his endeavor's national importance, noting that although the Petitioner cited the general demand for legal practitioners in diverse communities, this argument addressed the substantial merit of the endeavor, rather than its national importance. The Director noted that the Petitioner had not established that his endeavor would impact the field of law on a broader level, beyond the benefit to his clients. Regarding the Petitioner's projection of 29 jobs within 5 years of operation, the Director observed that the record did not adequately support the basis for such projections. Similarly, the record did not indicate the number of hours of labor required from each employee, did not provide a means of assessing the Petitioner's claim that 29 jobs would be generated, or how 29 new jobs in New Jersey would have substantial economic effects. The Director determined that the Petitioner's personal statement was aspirational

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in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[3] The record reflects that in 2014 the Petitioner obtained a bachelor's in law degree from [redacted] in Turkey and has at least eight years of progressive experience in the specialty, as required under the regulation at 8 C.F.R. § 204.5(k)(2).

and did not clarify how the benefits of the Petitioner's law firm would extend beyond his company or clients. The record included several letters of recommendation praising the Petitioner's professional competence. As a result, the Director determined that the Petitioner was well-positioned to continue working as a lawyer, but the letters lacked the specificity required to demonstrate that the Petitioner's endeavor had national importance. We need not address whether the Director was correct in concluding that the Petitioner was well-positioned to advance the proposed endeavor, because based on the evidence, the Petitioner has not demonstrated that the proposed endeavor is of national importance.

On appeal, the Petitioner states that the Director imposed novel substantive and evidentiary requirements beyond those set forth in the regulations. The Petitioner further asserts that the Director "did not apply the proper standard of proof . . . instead imposing a stricter standard, and erroneously applied the law." However, a review of the record does not support the Petitioner's claim. The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

The Petitioner asserts that he will be "addressing an industry shortage, which cannot be addressed by the U.S. workers as demand exceeds supply" and that we should consider "the impending shortage of business professionals that the United States is already beginning to face, and the [Petitioner's] extensive experience . . . showing his ability to immediately contribute to the U.S." However, the alleged shortage of occupations or occupational skills does not render his proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner argues that his over nine years of legal practice and a demonstrated commitment to upholding the highest standards of the legal profession makes him exceptionally well-positioned to lead the venture. He states that he has served as a co-founder and owner/attorney, legal intern, conciliator, attorney observer, attorney and other related positions. The Petitioner highlights his intention to "specialize in providing comprehensive legal consulting services, which include but are not limited to corporate law, international trade, immigration, and intellectual property, refugee, and pro bono legal advice." In addition, the Petitioner plans to "support foreign entities in understanding and fulfilling regulatory requirements" and believes his firm is poised to have "significant impact by attracting foreign investments and fostering trade relations the benefit both Turkey and the United States." However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. Moreover, the issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

The Petitioner states that the Director did not give due regard to the Petitioner's resume, Professional Plan, work in the field, letters of recommendation and industry report and articles. However, as he does not provide specific examples of factual or legal errors in the Director's analysis of the evidence,

as it relates to the endeavor's national importance, we are unable to meaningfully address these assertions. Moreover, as we previously observed, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility for the national interest waiver.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his endeavor as an attorney. We have reviewed the previously provided evidence[4] and agree with the Director that it is inadequate to show that the Petitioner's proposed undertaking meets this requirement.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner provided industry reports and articles which discuss how immigrant entrepreneurs such as the Petitioner play a vital role in the recovery of the U.S. economy and directly contribute to economic growth, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing his services as an attorney.[5] In *Dhanasar*, we 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." *Id.* 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 also has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or will otherwise result in substantial positive economic effects for the United States. Although he indicates on appeal that he will generate jobs in "underutilized areas, improving the wages and the working conditions for U.S. workers, and helping the local community bring investments to the region," he does not specifically explain how his work as a lawyer might lead to employment of U.S. workers or bring about other substantial positive economic effects, particularly in an economically depressed area.

Based on the above, we conclude that the Petitioner has not met his burden of proof to establish that his proposed endeavor has national importance, as required under the first prong of the *Dhanasar* analytical framework. Because he is ineligible for a national interest waiver on that basis alone, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding *Dhanasar's* third prong. *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 L-A-C*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.

[4] The Petitioner does not submit any additional evidence on appeal and references his RFE response instead.

[5] The Petitioner's arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national importance part.