U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34408093

Date: OCT. 17, 2024

Appeal of Nebraska 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 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established 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.

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;
- The individual is well-positioned to advance their proposed endeavor; and

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner indicated that he intends "to provide access to various baked goods to people in the U.S., as well as to contribute to the ongoing economic development of these same areas. For this purpose, he will establish and manage his own pastry shop business." He further stated:

> Through the Company, [the Petitioner] will be able to offer customers freshly made and delicious pastries, and snacks made from high-quality ingredients thereby encouraging its customers to enjoy trying pastries from all over the world, as the Company's offering will be international. Additionally, [the Petitioner's] endeavor will contribute to the local economic development, with the Company creating new jobs and generating tax income.

The Petitioner presented the March 2023 business plan for his proposed company. This business plan includes industry and market analyses, information about the Petitioner's company and its services, financial forecasts and projections, marketing strategies, a discussion of his education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company will employ 11 personnel in year one, 21 in year two, 33 in year three, 43 in year four, and 55 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while his plan offers revenue projections of $1,092,000 in year one, $2,103,400 in year two, $3,403,400 in year three, $4,482,400 in year four, and $5,902,000 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

In addition, the record includes information about the U.S. food manufacturing industry, bakery industry trends and statistics, [redacted] neighborhood economic profiles, and the number of businesses located in different parts of [redacted] The Petitioner also provided an article discussing the [redacted] mayor's announcement regarding an agreement to transform the [redacted] into an offshore wind hub. We agree with the Director that this information as well as other corroborating evidence in the record helps establish the Petitioner's endeavor has substantial merit. In determining national importance, however, the relevant question is not the overall importance of either the industry in which the individual will work or fostering economic development in [redacted] instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated the Petitioner had not demonstrated that his undertaking "stands to have broader implications rising to the level of having national importance." The Director also concluded the Petitioner had not shown that his proposed endeavor "would result in significant job growth and/or substantial positive economic effects for the nation."

On appeal, the Petitioner argues that he has "extensive experience and a proven track record in the food industry." He points to a recommendation letter from I-M- discussing his capabilities and experience in the food industry. In addition, the Petitioner mentions a letter of support from A-F- reflecting interest in investing in his company. The Petitioner's skills, knowledge, and prior work in his field, as well as interest from a potential investor, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

The Petitioner asserts that the letter of support from A-F- "emphasizes that [the Petitioner's] initiatives not only align with national health and economic goals but also provide substantial community benefits." He states that A-F-'s letter "provides a comprehensive review of [the Petitioner's] business plan for the bakery startup, highlighting several key aspects that underscore its potential impact." A-F's letter, however, does not sufficiently explain how performing day-to-day management of a pastry shop business as contemplated by the Petitioner's proposed endeavor rises to a level of national importance. The letter from A-F- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

The Petitioner also contends that his proposed endeavor will address "the workforce shortage in the baking industry." He points to an American Bakers Association article, entitled "Looming Workforce Shortage," which highlights the importance of addressing issues in the baking industry. We are not persuaded by the argument that the Petitioner's proposed endeavor has national importance due to the shortage of workers in his field. Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner asserts that his undertaking focuses on "promoting healthier eating habits, directly aligning with U.S. health policies and economic development goals." He states that "[h]is work in creating jobs and providing healthier food options is intrinsically linked to community health and economic renewal, areas of critical importance to the national interest." The Petitioner also claims that his "efforts to educate the community about healthier eating habits and the benefits of organic products advance a culture of wellness and informed decision-making within the community." He further contends that his proposed endeavor offers "significant job creation" which stands to "provide substantial economic benefits to the local community, particularly in an area that has been identified as economically disadvantaged."

The Petitioner, however, has not provided evidence demonstrating that his pastry shop business 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. Here, 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 region where his company will operate or in other parts of the United States.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See 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." *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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. While the Petitioner's statements reflect his intention to operate a pastry shop business, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined 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. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its future customers to impact his field or industry, public health, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in [redacted] or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his endeavor stands to generate jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers [redacted] or the United States a substantial economic benefit through employment levels or business activity.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

III. CONCLUSION

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.