U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34367844

Date: OCT. 30, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a financial manager and lawyer, 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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal 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 first prong, 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889.

In an autobiographical statement submitted in support of the petition, the Petitioner stated that he intends to work in the United States as a financial manager and lawyer, noting that his international background in both U.S. and Albanian law will "benefit the finance industry and the free market economy of the United States." He stated that he intends to work as an independent contractor in the United States and claimed that he "already [had] interest from a number of U.S. companies who want to contract [him] as a financial manager and lawyer."

The initial filing also included copies of the Petitioner's academic credentials and letters of recommendation in support of his eligibility.

The Director issued a request for evidence (RFE), noting that the record as initially constituted was insufficient to demonstrate that the proposed endeavor had substantial merit or national importance. The Director requested a detailed description of the Petitioner's proposed endeavor in order to evaluate his request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner omitted mention of seeking contract work with U.S. companies as a financial manager and lawyer as originally claimed, and instead submitted a business plan indicating that he intends to open his own law firm once he becomes a licensed attorney in the United States. The business plan stated as follows:

> By creating a law office specializing in business art law, [the Petitioner] will find a niche in the market and offer legal services tailored to a specific sector of the art industry. This targeted approach will attract clients, both domestically and internationally, who seek specialized legal counsel in navigating the intricacies of the art world.

> Moreover, [the Petitioner's] planned expansion of his law office, starting with three attorneys, signifies job creation and economic growth. By employing attorneys specialized in intellectual property and asset management, [the firm] provide a comprehensive range of services to clients, fostering innovation, protecting intellectual property rights, and facilitating the growth of the art market. [The Petitioner] will contribute his expertise in contract and commercial transactions, while the other two attorneys will specialize in intellectual property and asset management. This unique specialization will attract international artists, collectors, and businesses to seek legal counsel in the United States, ultimately stimulating economic activity and generating revenue. This expansion will not only benefit the firm's clients but also contribute to the overall growth of the United States economy.

The Petitioner claimed that because the art world is a global industry, his firm will provide a positive economic impact by attracting foreign investors to the U.S. art market. He further stated that his firm will promote cultural exchange and diplomacy by fostering a supportive legal environment for artists and international collaborations. Finally, he claimed that his firm will play a vital role in safeguarding the intellectual property of artists and creators.

The Petitioner also submitted an opinion letter, additional recommendation letters, and a copy of what appears to be a handbook authored by the Petitioner which was not accompanied by an English translation.

In denying the petition, the Director determined that the Petitioner had not shown that his endeavor had substantial merit or national importance. Specifically, the Director determined that the Petitioner had not shown that the endeavor had significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework. The Director further concluded that the record did not satisfy the second and third *Dhanasar* prongs, as required. *See Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner asserts that he has established, by a preponderance of the evidence, the substantial merit and national importance of his proposed endeavor, and that the Director's decision was in error because it ignored evidence and misstated facts and law. The Petitioner further asserts that the Director erred by not considering the totality of the evidence provided both initially and in response to the RFE.

With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, USCIS considers not only the quantity, but also 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).

Preliminarily, we note that the Petitioner's proposed endeavor is material to whether the endeavor has substantial merit and is of national importance. *See Dhanasar*, 26 I&N Dec. at 889-90. USCIS

regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Although not raised by the Director, the Petitioner introduced a new proposed endeavor in response to the RFE rather than establishing the substantial merit and national importance of the proposed endeavor described in the initial petition. The Petitioner's new plan to form his own law firm where he will specialize in the field of business art law and intellectual property describes a new set of facts regarding the proposed endeavor and was presented after the filing date, and thus cannot retroactively establish eligibility. Accordingly, we find that the Petitioner made an impermissible material change to his proposed endeavor. If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. *See* 8 C.F.R. § 103.2(b)(1). Therefore, on appeal, we will consider if the record demonstrates that his initial proposed endeavor - working as a financial manager and lawyer for U.S. entities - has substantial merit and national importance. We conclude it does not.

As initially stated, the Petitioner intends to work as an independent contractor, providing services as a financial manager and lawyer to U.S. entities that have expressed interest in his work. The Petitioner did not provide a timeline for when he would occupy these roles, and it is not apparent whether securing a position in either of these areas is the proposed endeavor or whether the proposed endeavor involves the Petitioner performing these roles simultaneously or consecutively. Overall, we have insufficient information concerning the proposed endeavor with which to determine whether it has substantial merit because the Petitioner's proposed endeavor has not been clearly defined. We therefore agree with the Director's determination that the Petitioner did not submit persuasive evidence to support a finding of substantial merit. The Petitioner bears the burden to both affirmatively establish eligibility under the *Dhanasar* framework, of which substantial merit is one piece, and establish his eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

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.

We agree with the Director that the Petitioner has not provided sufficient documentation or explanation concerning how his proposed endeavor has national importance. The purpose of the national interest waiver is not to afford the Petitioner an opportunity to engage in a job search or further his own career while only adding ancillary benefits to the nation. It remains unclear as to what specifically his proposed endeavor involves aside from securing a job or contract work with a U.S. company or law firm as either a financial manager or a lawyer. Moreover, we do not know if he

intends to perform both functions he describes or whether he will perform in only one of the identified positions. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *See id.* at 889. While it may include one or both of the positions outlined above, we conclude that the Petitioner has not provided a specific or consistent proposed endeavor activity such that we can determine its national importance.

Throughout the record and in his personal statements, the Petitioner points to his background, education, language proficiencies, and experience in his field. The Petitioner's knowledge, skills, and experience in his field, however, 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 the second consideration of *Dhanasar*'s first prong. 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.

The Petitioner claims that his proposed endeavor has national importance because "due to [his] unique background, [he] possess[es] in-depth knowledge and experience in a broad range legal area, as well as solid hands-on experience of working successfully on complex legal cases both in Albania and the United States." The Petitioner further relies on the career outlook for lawyers set forth in the U.S. Bureau of Labor and Statistics' *Occupational Outlook Handbook*, noting that the career outlook for the legal profession is optimistic. While this publication provides useful background information, it is of limited value in this matter, as the Petitioner's specific proposed endeavor remains unclear. Furthermore, 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 "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner has not established how his individual employment in one or more of the roles identified would affect the U.S. economy more broadly consistent with national importance.

To the extent that the Petitioner's proposed endeavor can be understood, we conclude that he has not substantiated how his specific work in the legal industry will positively impact the economy. Specifically, how one financial manager or lawyer will trigger substantial positive economic impacts has not been explained. Assuming the Petitioner simultaneously or alternatively chooses to pursue his initial endeavor to work as a financial manager and lawyer, he has not provided sufficient information of how his work would rise to the level of national importance. While such endeavors may impact the individual clients he assists or the employers for which he provides services, the national importance of this work has not been adequately explained or substantiated. Similarly, 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.

The Petitioner further contends that the Director did not duly consider certain pieces of evidence and failed to apply the correct standard of proof when reviewing the evidence. In support, he relies primarily upon the evidence and arguments previously submitted. While we acknowledge the Petitioner's appellate claims, we nevertheless conclude that the documentation in the record does not sufficiently establish the

national importance of the proposed endeavor as required by the first prong of the *Dhanasar* analytical framework.[2]

Although the Petitioner submitted letters of recommendation from others in the legal field, none of the authors discussed the Petitioner's proposed endeavor as initially stated. Instead, the authors primarily focused on the Petitioner's past work experience and academic accomplishments. For example, while the Petitioner submitted a letter of recommendation from his former professor at the [redacted] College of Law, the professor does not discuss the Petitioner's endeavor, but instead primarily focuses on the Petitioner's past achievements and accomplishments while a student under his tutelage. We further note the submission of a letter from a former colleague of the Petitioner, who discusses the Petitioner's contributions on a project upon which they worked collaboratively. While the writer praises the Petitioner's contributions to the project as a legal consultant, he does not address the Petitioner's proposed endeavor. Rather, the writer discusses the Petitioner's previous ambition to facilitate the establishment of small handcraft factories in Macedonia and his dedication to empowering women entrepreneurs, the relevance of which is unclear in this matter when the issue before us is whether the Petitioner's proposed endeavor to work as a financial manager and lawyer is of national importance.

The Petitioner also submitted an advisory opinion from a professor at the [redacted] School of Law. The professor's letter generally discusses the Petitioner's qualifications and focuses primarily on his intent to establish his own law firm in the United States. As discussed above, this proposed endeavor, introduced for the first time in response to the RFE, constitutes a material change to the Petitioner's initial proposed endeavor and we will not consider it in our appellate review, as a Petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 175; *see also Matter of Katigbak*, 14 I&N Dec. at 49. Therefore, the professor's comments regarding the Petitioner's endeavor to establish his own law firm bear little evidentiary weight.

Although the professor discusses the Petitioner's qualifications, as well as the importance of the legal industry and the growing demand for legal professionals, the advisory opinion does not contain a discussion of the initial proposed endeavor or its national importance but rather focuses on the Petitioner's new endeavor and the importance of the legal field in general. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinion is of little probative value as it does not meaningfully address the details of the proposed endeavor as initially described and why it would have national importance.

On appeal, the Petitioner states that his proposed business will create jobs and benefit the wider U.S. economy, and submits new evidence in support of this assertion, including financial forecasts for the business through 2026. The Petitioner also resubmits his business plan, and asserts that the Director erred in not sufficiently reviewing his business plan when determining substantial merit and national

[2] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

importance. As previously noted, however, the Petitioner's plans to establish and direct a new company, submitted for the first time in response to the RFE, constitute a material change to the proposed endeavor as initially stated, and therefore will not be considered. Even if we were to consider this new proposed endeavor, the evidence is insufficient to show that the potential prospective impact of this endeavor would have the sort of potential to employ U.S. workers or other positive economic effects that would rise to the level of national importance.

Because the Petitioner has not shown that he intends to pursue his initial endeavor and because he has not provided sufficient information and documentation regarding his proposed endeavor, he did not demonstrate that the endeavor has substantial merit and national importance. Therefore, we cannot conclude that he meets the first prong of the *Dhanasar* framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. *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 established, by a preponderance of the evidence, that he meets 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.

ORDER: The appeal is dismissed.