U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32459534

Date: SEPT. 2, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an executive manager in the field of business, 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 the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. The matter is now before us on appeal. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *Id.*

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32),[1] as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish 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:

- 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.

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.*

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

As indicated above, the 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. The Director determined that the Petitioner qualifies for EB-2 visa classification as an individual holding an advanced degree based on

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and District of Columbia Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

his bachelor's degree in accounting sciences and at least five years of progressive experience in the specialty, and we agree. The remaining issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of that classification's job offer requirement. We conclude that he is not because he has not established by a preponderance of the evidence the national importance of his proposed endeavor.

The Petitioner proposed to work in the United States as an executive manager and provide services in accounting and compliance, banks and finance, organizational restructuring and strategic management, team leadership, strategic planning, and customer relationship management to impact the field of business.

The Director determined that the Petitioner's proposed endeavor has substantial merit but does not have national importance because he has not demonstrated that his proposed endeavor has national or global implications within a particular field or has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Director did not discuss the second and third prongs of the *Dhanasar* framework and concluded that the Petitioner is not eligible for and does not merit a national interest waiver as a matter of discretion because the record did not establish the national importance of his proposed endeavor. On appeal, the Petitioner contends that the Director's decision contains numerous erroneous conclusions of law and fact and maintains that his proposed endeavor is of national importance.

The Petitioner claims that he has submitted supporting evidence to establish that his proposed endeavor has national or even global implications in the finance and credit cooperative sectors. He cites documents, which provide definitions of financial cooperative and credit cooperative, and asserts that these documents highlight the nature and significance of credit cooperatives and their role in promoting financial justice, prosperity, and social responsibility. He submitted an article about credit unions, which explains the role that cooperatives play in the development of the communities in which they are located has a positive impact on income, employment, and entrepreneurship.

However, 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 noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. As such, the Petitioner must demonstrate by a preponderance of the evidence that his proposed endeavor to work as an executive manager and provide accounting, finance, and other services in the field of business is of national importance. While the article discusses benefits that credit cooperatives offer to the communities, it does not address the Petitioner's specific proposed endeavor or establish that his proposed endeavor is of national importance.

The record includes expert opinion letters from [redacted] a professor of international business at [redacted] and [redacted] a professor of practice at [redacted] Professor [redacted] asserts that the Petitioner's proposed endeavor in business management is important to the United States because it promotes the growth and expansion of small businesses that make up 99% of businesses in the United States and increased profitability from better financial management. Professor [redacted] explains that chief executives implement policies of organizations or businesses to ensure continuing operations, to maximize returns on investments, or to increase productivity. He also explains that managers are critical to providing resources, improving staffing, facilitating

communication, and providing stability. He also states that financial specialists help businesses understand consequences, analyze risks, and evaluate cash flows to improve performance and operations. In his letter, Professor [redacted] asserts that the Petitioner's proposed endeavor in finance has both substantial merit and national importance because modern economies depend on a thriving financial sector, finance and insurance represent 7.4% or $1.5 trillion of U.S. gross domestic product, and financial services and products help facilitate and finance the export of U.S. manufactured goods and agricultural products. Professor [redacted] further explains that growth supported by enterprises pays dividends for all U.S. citizens by increasing tax revenues to the federal and state governments and increasing the funds available to spend on hospitals, schools, roads, and other essential services.

USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). Nevertheless, USCIS is responsible for making the final determination regarding a petitioner's eligibility for the benefit sought. *See id.* The expert opinion letters discuss the importance of finance, business management, and small businesses to the U.S. economy and highlight the important roles chief executives, managers, and financial specialists play for their organizations or businesses. However, again, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work but the specific endeavor that the Petitioner proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. While we value expert opinion letters, they do not provide sufficient information and evidence to substantiate their claims that the Petitioner's proposed endeavor is of national importance.

The Petitioner asserts that the best way to estimate the prospective impact of one's work is by evaluating the individual's past achievement and that the broader implications of his work may be demonstrated by the fact that his contributions have rendered impressive results. He then discusses his education, work experience in the credit cooperative sector, participation in credit cooperative studies programs and events, membership with the Association of Nonprofit Accountants and Finance Professionals, and implementation of projects that contributed to the growth of his former employer. The record contains the Petitioner's resume, employment verification letters, diploma, school transcripts, certificates for completion of various programs, training, and courses, accountant license in Brazil, and support letters from his former colleagues discussing the Petitioner's work experience, skills, and contributions to his former employers.

In *Dhanasar*, we indicated that we look for broader implications of the proposed endeavor and that an undertaking may have national importance, for example, because it has national or even global implications within a particular field. *See id.* at 889. The Petitioner's education, work experience, professional achievements, past contributions to his former employers, and other professional qualifications are relevant under the second prong of *Dhanasar* to support the claim that that he is well positioned to advance the proposed endeavor. *See id.* at 890. The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *See id.* at 889.

The Petitioner's education, professional achievements, and contributions to his former employers do not address his proposed undertaking and do not sufficiently explain how his proposed endeavor to work as an executive manager and provide various services in the field of business offers benefits that extend beyond his employer or clients to impact the field of business more broadly. Additionally,

while Petitioner's professional plans reflect his intention to provide various services in the field of business as an executive manager for his employer or clients, he has not provided sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. Without sufficient documentary evidence of its broader impact, the Petitioner's proposed endeavor does not meet the national importance element of the first prong of the *Dhanasar* framework.

The Petitioner also contends that he has submitted supporting evidence to establish that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. He cites a study conducted by Joe Folsom of U.S. Department of Agriculture, Rural Business, in 2003 to measure the economic impact of cooperatives in Minnesota. The Petitioner states that the study shows that $6.07 billion in revenues generated by cooperatives and credit unions resulted in total direct, indirect, and induced impacts of $10.89 billion in output and a total employment figures of 79,363. He further states that the study highlights the substantial benefits of local ownership and single-level taxation, leading to increased output, employment, and tax revenues. The Petitioner claims that his commitment to fostering relationships with government agencies, market actors, and customers and his international background support the claim that his proposed endeavor extends beyond his employers and clients, thereby offering substantial positive economic effects for the nation.

In *Dhanasar*, we stated that an endeavor that has a 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. *See Dhanasar*, 26 I&N Dec. at 890. As for the economic value and job creation that the Petitioner asserts his services will offer, the record does not contain sufficient supporting evidence. The preponderance of the evidence standard requires the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. *See id.*

Here, lack of supporting details and evidence detracts from the credibility and probative value of the claim regarding job creation and other substantial positive economic effects. The record lacks sufficient evidence demonstrating that the Petitioner's services as an executive manager will have an impact on the field of business at a level commensurate with national importance. The Petitioner has not offered sufficient evidence that his services as an executive manager will enable his employer or clients to employ a significant population of workers in an economically depressed area or that his endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. Accordingly, the record does not sufficiently demonstrate that the Petitioner's proposed endeavor is of national importance.

Lastly, the Petitioner argues that the national importance of his proposed endeavor is further evidenced by the professional demand and talent shortage in business. He explains that employment of top executives is projected to grow 6% from 2021 to 2031 and that about 318,100 openings for top executives are projected each year over the next decade. He further states that there is a significant shortage of leaders prepared to fill key leadership roles and that without solid leadership pipelines,

organizations can find it difficult to have the best people in the top jobs to navigate the everyday challenges of running a business and responding to and recovering from crises.

We are not persuaded by the argument that the Petitioner's proposed endeavor has national importance due to the professional demand and talent shortage in business because he has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Furthermore, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. *See* 20 C.F.R. § 656; 8 U.S.C. § 1182(a)(5)(A), 1182(p)(1). Therefore, a shortage of qualified professionals is not sufficient to demonstrate eligibility for the national interest waiver.

Because the evidence 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. Therefore, further analysis of his eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose, and we will reserve these issues for future consideration should the need arise.[3]

III. CONCLUSION

Although the Petitioner has shown that he is a member of the professions holding an advanced degree and that his proposed endeavor to work as an executive manager in the field of business has substantial merit, he has not established by a preponderance of the evidence that his proposed endeavor is of national importance. Accordingly, we conclude that the Petitioner is ineligible for and otherwise does not merit a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[3] *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 alternate issues on appeal where an applicant is otherwise ineligible).