U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32463523

Date: SEPT. 4, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, whose proposed endeavor is to provide consulting, advising, and training services to small and medium-sized software companies and entrepreneurs, 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's proposed endeavor had prospective national importance, that he was well-positioned to carry out the proposed endeavor, or that a waiver of the labor certification requirement was beneficial. 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," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016). 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

- 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. Dhanasar, 26 I&N Dec. at 889.

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

The Petitioner intends to continue his career in the United States as an entrepreneur in the field of business and financial consulting. He plans to leverage his training and over 20 years of experience and services in the business and finance industry to operate as an entrepreneur targeting consulting for entrepreneurs and small or medium-sized companies "who want to operate Latin American businesses in the United States correctly and who want expert support and advice and a strong network of service providers." He notes that the "firm's service line, encompassing business consulting and advisory to dispatcher service analysis, is meticulously designed to track and manage business processes, partner relationships, transport logistics, educational endeavors, adoption processes, and strategies for business recovery and market growth."

---

in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

The Director found the Petitioner qualified for underlying EB-2 classification as a member of the professions holding an advanced degree. However, the Director determined that the Petitioner had not met the Dhanasar requirements for a waiver of a job offer and labor certification from a U.S. employer. Specifically, the Director concluded that the national importance of the endeavor had not been demonstrated under prong one, that the Petitioner was not well-positioned to carry out the endeavor under prong two, and that the Petitioner had not shown that a waiver of the job offer requirement would be beneficial as required by prong three. We agree the Petitioner has not established the national importance of the endeavor, as required under the first prong of Dhanasar.

A. The Petitioner Has Hot Demonstrated that His Endeavor Has National Importance

On appeal, the Petitioner asserts that in denying the petition, the Director imposed a novel standard and evidentiary requirements beyond those set forth in the regulations," but does not point to any specific examples. The Petitioner further alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard . . . to the detriment of the appellant." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. See Matter of Chawathe, 25 I&N Dec. at 375; see also Matter of Martinez, 21 I&N Dec. 1035, 1036 (BIA 1997); Matter of Soo Hoo, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. See generally 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not further explain or identify a specific instance in which the Director applied a standard of proof other than the preponderance of the evidence in denying the petition.

On appeal, the Petitioner also contends that he satisfied prong one of the Dhanasar framework because the Director did not properly weigh the evidence. He highlights his history of success in similar endeavors, and notes that the proposed endeavor could broadly impact the business and financial consulting industry. He contends that the Director failed to adequately consider his resume, professional plan, work experience and credentials, letters of support, and the supporting "Industry Reports and Articles" outlining "how immigrant entrepreneurs, such as [the Petitioner], play a vital role in the recovery of the U.S. economy and directly contribute to the country's ongoing economic growth." The Petitioner argues that his "expertise and skill set will support U.S. businesses in developing a competitive edge in both national and international markets - this will push the nation to achieve whole new layers of productivity, affecting economic and commercial interests in the business and financial consulting industry." (Emphasis in the original).

In support of these contentions, the Petitioner has submitted evidence including, but not limited to: his resume, a professional plan, documentation regarding his experience, letters of recommendation, and "Industry Report and Articles" discussing the "vital role" immigrant entrepreneurs play "in the recovery of the U.S. economy and directly contribute to the country's ongoing economic growth," The Petitioner also claims he has documented an "impending shortage of business professionals in the United States."

The Petitioner has not satisfied the first prong of the Dhanasar framework requiring a proposed endeavor to be of national importance. Although the Petitioner stresses that the proposed endeavor is

likely to be successful given his extensive work experience, and will create employment opportunities, these factors are not sufficient to show national importance. 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. Although the evidence reflects the Petitioner's intention to provide valuable services for his clients, 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 find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clientele to impact the business and financial consulting industry or otherwise impact economic initiatives more broadly at a level commensurate with national importance.[2]

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects. Specifically, he has not shown that his company's future staffing levels, business activity, associated tax revenue, and financial initiatives stand to provide substantial economic benefits in Florida, where the proposed endeavor is intended to be based, or in the United States generally. While the professional plan indicates 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. Id. at 890. In addition, although the Petitioner asserts that the company will hire "their first employee…as soon as revenue allows," he has not offered sufficient evidence that he would employ a significant population of workers, or that the endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. He also has not shown that the business and services performed by the company would represent a significant share of the business and financial consulting services market, even among the endeavor's target audience of "entrepreneurs and small or medium-sized companies who want to operate Latin American businesses in the [United States]." Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework.

The Petitioner has also not demonstrated that the Director violated USCIS policy or erroneously evaluated the case. The Petitioner takes issue with the Director's weighing of the evidence, but he has not provided details of which "novel standard" the Director purportedly applied. Similarly, although he alleges that the Director failed to correctly consider various pieces of evidence, he has not provided details of how the Director's analysis misevaluated this evidence.

Because the documentation in the record does not establish the national importance of the proposed endeavor, as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve opinion on whether the Petitioner could satisfy the second and third prongs to qualify for a national interest waiver. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory

[2] The Petitioner has provided, and we have reviewed, a substantial number of documents outlining the importance of the business and financial services sector to the national and global economy. However, the Dhanasar framework instructs us to evaluate the impact of the specific proposed endeavor, rather than the field or industry generally. Id. at 889.

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 alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not shown that the proposed endeavor is of national importance. Because he has not met the first prong of the Dhanasar analytical framework, we find 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.