U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33963321

Date: SEP. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an occupational health and safety specialist, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 qualifies for EB-2 immigrant classification as an individual of exceptional ability. Additionally, the Director determined that the Petitioner did not establish eligibility for a national interest waiver of the job offer requirement. 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

- 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 Petitioner's proposed endeavor is to open and manage an environmental consultancy firm which will "improve current occupational health and safety systems in the operations and business environments of small, medium, and large companies in the US."[2] He explains that through his business, which will be based in [redacted] Massachusetts,[3] he will provide consulting, training, and technical services relating to workplace safety, health, environmental issues, compliance with Occupational Safety and Health Administration (OSHA) standards and other regulations, and performance improvement.

As it relates to substantial merit, the endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. The Director determined the Petitioner established the substantial merit, but not the national importance, of the proposed endeavor. We agree that the Petitioner has not established the national importance of his proposed endeavor and therefore cannot meet the requirements for a national interest waiver. Accordingly, we will not reach whether he has established eligibility for the underlying EB-2 classification.

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.

The Petitioner contends that through his environmental consultancy firm based in Massachusetts, he will promote "safe and sustainable work practices across diverse sectors of the economy," thereby having a broad impact on the economy, worker health and safety, environmental protection, and society as a whole. He states his proposed endeavor will positively influence the quality of life in the United States through reducing occupational hazards, improving workplace health, and contributing to sustainability and compliance with environmental regulations. Further, he states his efforts will improve productivity, reduce healthcare costs, and provide new employment opportunities. He submits a copy of the Occupational Safety and Health Act of 1970, as well as articles with information and statistics about work-related injuries, occupational health and workplace safety in general, the impact of the Covid-19

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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).

[2] The Petitioner states in the second page of his appeal brief that he is a "Tourism Professional Consultant." This appears to be a mistaken reference.

[3] Other portions of the evidence state the proposed company will be in [redacted] Massachusetts. The exact planned location of the company is not clear from the record. We also note that although the Petitioner indicated on his initial petition that his mailing address was in Massachusetts, he indicates on appeal that his mailing address is now in Washington, DC. It is not clear whether this impacts his plans to start a business in Massachusetts.

pandemic on workplace safety, environmental health and safety, grant funding from the U.S. Department of Labor for projects relating to worker safety and health, the economic implications of recycling, "Immigration and Entrepreneurship in the United States," and employment data relating to jobs promoting occupational safety. However, the matter here is not whether these issues are nationally important. Rather, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of operating an occupational safety consultancy firm in Massachusetts.[4]

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 contends that his proposed endeavor will help resolve occupational shortages in environmental management and occupational safety fields. 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.

Moreover, the Petitioner stresses his skills and experience in occupational safety. But 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. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

The Petitioner also submits letters of recommendation from past employers and colleagues. However, the letters do not show the broader impact of the Petitioner's work rather than limited to his specific projects and clients. Moreover, the letters cover the Petitioner's prior work and accomplishments and relate more to the second prong rather than the first prong of the *Dhanasar* framework. *Id.* at 890. A letter of intent from a construction company in Boston, describing a non-binding plan for a potential partnership with the Petitioner, similarly does not offer details about the national importance of the specific endeavor.

Further, the Petitioner submits an expert opinion letter from an adjunct professor at [redacted] who discusses the importance of occupational health and safety, the possible impact of the Petitioner's planned company on small and medium companies' ability to protect their employees and comply with regulatory requirements, and the need for risk management in high-risk sectors. The letter mentions the Petitioner's potential to contribute to broad economic growth through employment and economic ripple effects, promotion of sustainable business practices that will have a global impact, enhancing societal welfare through improving workplace safety and environmental protection, and contributing to the general body of knowledge on occupational health and environmental safety. The letter notes that federal programs illustrate the importance of workplace safety and environmental

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

sustainability. However, the letter generally discusses the importance of various topics and subjects without showing the wider effect in the field of the Petitioner's particular proposed endeavor.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the work. *Id.* at 889. Here, the Petitioner has not demonstrated how his business would largely influence the field and rise to the level of national importance. In *Dhanasar*, we determined 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 record does not show through supporting documentation how the Petitioner's endeavor sufficiently extends beyond his prospective clients and employees to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Finally, while he provided a business plan for the proposed company, the Petitioner did not present sufficient supporting evidence corroborating the assertions and figures. He did not demonstrate how his business plan's claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. Although the business plan forecasts sales of $1,290,000 in the first year and rising to $2,604,376 in year five, the Petitioner did not establish the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, even though the business plan claims the creation of seven jobs in the first year and increasing to 22 in the fifth year, plus indirect job creation and economic ripple effects, the Petitioner did not demonstrate the relevance of these numbers and show that such future staffing levels would provide substantial economic benefits to regions in Massachusetts or the U.S. economy more broadly at a level commensurate with national importance. Further, although he indicated plans to begin operations in Massachusetts but then expand to New England in the second year and Florida in the third, he did not provide details about those plans or data about the economic impacts his company would have in those regions. The Petitioner, for instance, did not establish that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. He claims that his work could reduce costs linked to workplace accidents, fines, and environmental harm, increase the productivity of companies, and employ workers in economically depressed areas, but he does not provide detail or data to show the economic impact of his specific, proposed endeavor. For all these reasons, the record does not demonstrate that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

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. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility for EB-2 visa classification under section 203(b)(2)(A) of the Act as an individual of exceptional ability. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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, he has not demonstrated eligibility for a national interest waiver.

ORDER: The appeal is dismissed.