U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32456168

Date: SEP. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business administration and finance professional, 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 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Director found that the Petitioner, a business administration and finance professional, qualifies as a member of the professions holding an advanced degree. After considering the Petitioner's response to the Director's request for evidence (RFE) to establish that the Petitioner satisfied each prong of the *Dhanasar* analytical frame work, the Director denied the petition. The Director concluded that although the Petitioner established the substantial merit of the proposed endeavor, he had not established that it had national importance, that he was well positioned to advance the proposed endeavor, and that, on balance, waiving the job offer requirement would benefit the United States. The Director found, therefore, that a favorable exercise of discretion in waiving the job requirement was not warranted.

The Petitioner's proposed endeavor, as described in a business plan submitted with the Petitioner's RFE response, is "a consultancy that specializes in telemedicine supply chain management." In an amended personal statement submitted with his response, the Petitioner clarified that he intended "to build on [his] extensive experience and expertise in supply chain management (SCM) and research in telemedicine to develop a novel telemedicine platform that connects patients with health professionals, through the location of kiosks, computers, and tablets, facilitating continuous access through cell phones in rural areas in order to eliminate access barriers to healthcare for the rural communities, migrant population, and people with mobility and transportation difficulties and reducing healthcare costs in treatments and diagnoses." and to "continue to support advancements in [his] field by offering the population from Florida and Puerto Rico access to healthcare consultation and medical response through mobile devices."

On appeal, the Petitioner contests the Director's observation that "[n]o evidence was submitted establishing that the proposed endeavor will influence [the Petitioner's] field or otherwise be of importance to the nation as a whole." The Petitioner argues that this indicates the Director's failure to "contemplate or discuss the totality of the evidence submitted for proving that the proposed endeavor has both substantial merit and national importance." The Petitioner cites to *Buletini v. INS*, 860 F. Supp. 1222, 1233 (E.D. Mi. 1994), noting that in that case, the court stated that the "failure to consider all of the relevant evidence submitted by a plaintiff constitutes an abuse of discretion." He contends that, as the Director did not contemplate all of the evidence submitted, USCIS' determination that the Petitioner did not meet the requirements of the first *Dhanasar* prong by a preponderance of the evidence amounts "to an abuse of discretion on the part of the adjudicator." The court in *Buletini* did not suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *See Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). Here the record reflects that the Director's decision explicitly

referenced evidence submitted with the initial petition and RFE response and considered it in concluding that the Petitioner had not demonstrated the national importance of the proposed endeavor.

The Petitioner further objects to the Director's observation in the denial that "[t]he Petitioner did not shift to explain why his specific proposed endeavor reaches a level that would be considered national in scope," and asserts that Director abused their discretion by imposing "a novel and substantive standard" to meet the national importance aspect of *Dhanasar's* first prong. The Director's observation in the denial appears to conflate the eligibility requirements in the *Dhanasar* first prong, (which requires a showing of substantial merit and national importance, and focuses on the *specific endeavor* that the Petitioner proposes to undertake),[2] in part, with the framework put forth in our precedent decision, *Matter of New York State Dep't of Transp.* (*NYSDOT*), 22 I&N Dec. 215 (Acting Assoc. Comm'r 1998), which USCIS previously used to evaluate national interest waiver petitions. The *NYSDOT* framework looked first to see if a petitioner has shown that the area of employment is of "substantial intrinsic merit." *Id.* at 217. Next, a petitioner had to establish that any proposed benefit from the individual's endeavors will be "national in scope." *Id.* In announcing the *Dhanasar* framework we vacated *NYSDOT*.

However, the record reflects that the Director did not determine the Petitioner's ineligibility under *Dhanasar's* first prong based solely upon this observation, as asserted. For example, the Director also considered whether evidence in the record was sufficient to show "that the benefits to the national economy resulting from the petitioner's endeavor would reach the level of "'substantial positive economic effects'" contemplated by *Dhanasar*[3] and whether evidence demonstrated that the proposed endeavor "will have a broader impact on the field outside of [the Petitioner's] prospective company and/or clients."

The Petitioner lastly argues on appeal that, but for the Director's abuse of discretion, the evidence submitted establishes the national importance of the proposed endeavor. Upon de novo review of the record, we conclude the Petitioner has not offered sufficient information and evidence to demonstrate the national importance of his proposed endeavor as required under the first prong of the *Dhansar*.[4] The first prong of *Dhanasar*, 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.

The Petitioner contends that he submitted numerous articles in the record establishing the national importance of his proposed endeavor. Upon review, these articles generally discuss rural health in America, and the importance of telemedicine in improving health outcomes. We acknowledge the Petitioner's argument on appeal that the expansion of telehealth medicine services into rural communities is important to the nation's societal well-being. 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 "the specific endeavor that the foreign national proposes to undertake." *Dhanasar,* 26 I&N Dec. at 889.

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[2] *See Dhanasar*, 26 I&N Dec. at 889.
[3] *Id.* at 890.
[4] The Director determined that the Petitioner had established the substantial merit of the proposed endeavor.

The Petitioner further contends that the national importance of his proposed endeavor is demonstrated in part by "the existence of national initiatives intimately aligned with [his] endeavor to provide telemedicine services to immigrant rural communities in the United States." To support this contention, he refers to the 2021 American Rescue Plan Act (ARPA), the Consolidated Appropriations Act, 2023, and to reports from the U.S. Health Resources and Services Administration (HRSA) and the Centers for Disease Control and Prevention (CDC). ARPA provides funding for grants to expand telehealth services in rural communities while the Consolidated Appropriations Act provides for the expansion of telehealth services in the Medicare program. The CDC and HRSA reports generally discuss the importance of telemedicine in providing healthcare to rural populations. While these documents indicate the importance of telemedicine and the important role it can play in providing medical services to rural communities, they do not specifically show the government's interest in the Petitioner's proposed endeavor. In evaluating national importance under the first prong of the *Dhanasar* framework, we will consider evidence demonstrating how a specific proposed endeavor impacts a matter that a government entity has described as having national importance or a matter that is the subject of national initiatives. However, providing consulting services in an area that is adjacent to the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor in that area. Here he has not offered evidence, such as documentation showing that he has received ARPA funding, or letters demonstrating U.S government agencies' or quasi-governmental agencies interest in his proposed endeavor,[5] sufficient to demonstrate interest in his proposed endeavor in a manner that reflects its national importance.

Finally, the Petitioner asserts that the economic impacts of his proposed endeavor also demonstrate its national importance. However, 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 for our nation. The Petitioner's business plan indicates that his endeavor will hire five employees in the first year, and additional five employees in the second year.[6] Further he has not shown that his company's future staffing levels stand to provide substantial economic benefits in Florida, Puerto Rico, or the United States. While the increasing staffing levels indicate that the company has growth potential, they do 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 his company will hire U.S. employees, he has not offered sufficient evidence that the area where his endeavor will operate is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels. For example, although the Petitioner indicates in his amended personal statement that the targeted market for his enterprise will include "Opportunity Zones" in Florida and Puerto Rico, he does not offer additional evidence to demonstrate that these zones are economically depressed, that he would hire workers in

[5] *See generally* 6 *USCIS Policy Manual* F.5(D)(3), www.uscis.gov/policymanual (discussing letters from interested government agencies or quasi-governmental agencies in the United States.).

[6] The business plan does not adequately explain how these staffing projections were calculated. For example, while the Petitioner indicates that expenses will not increase in the first year to allow for an increase in hiring, he does not provide these expenses or otherwise explain how this increase in staffing will be supported.

these zones, or that his enterprise would offer the population of these areas a substantial economic benefit.

Because the documentation in the record does not establish that the proposed endeavor has both substantial merit and national importance as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning his eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating 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, 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.