U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33951143

Date: SEP. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a market research analyst and financial analyst, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 although the Petitioner is a professional holding an advanced degree, he did not establish 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

In response to the Director's request for evidence, the Petitioner submitted a business plan and described his proposed endeavor as providing market research and financial services and a "commitment to economic prosperity" whereby he aims to "instigate innovation and drive sustainable economic growth." He also stated that his "desire to stay in America transcends personal aspirations; it reflects a commitment to growing not just as a financier but as a key link in the financial well-being of the country." The business plan provided the following short-term goals with a brief description: 1. Technology-driven market research innovation; 2. Rapid adaptation to online marketing dynamics; 3. Ethical framework integration in financial analysis; 4. Collaborative market entry support for U.S. companies in CIS; 5. Dynamic contribution to post-pandemic economic recovery; 6. Specialized project engagement; 7. Industry thought leadership and knowledge sharing; 8. Continuous learning and professional development; 9. Strengthening cross-cultural business relationships; 10. Integration of sustainable practices in market strategies; and, 11. Contribution to educational initiatives. The Petitioner also briefly listed long-term goals and described how his role as a market research analyst and financial analyst will contribute to the U.S. economy.

The Director acknowledged that the Petitioner's proposed endeavor has substantial merit, and that he is well-positioned to advance the proposed endeavor. The Director determined, however, that the Petitioner did not establish the proposed endeavor is of national importance, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner reiterates previous statements made in the initial petition and also submits an updated business plan for the Petitioner's proposed endeavor.

We determine the Petitioner's new business plan submitted on appeal presents a new set of facts regarding his proposed employment, which is material to eligibility for the EB-2 classification and for a national interest waiver. The new business plan filed with the appeal materially changes the proposed endeavor. For example, the Petitioner provided documentation with the initial petition that he will work as a financial development director for a company, but the new business plan indicates that he will open his own business. Notably, the Petitioner's initial description of his proposed employment in the United States did not include plans to create and manage his own company. Here, the Petitioner's plans to establish a new company and perform financial planning services presented after the filing date cannot retroactively establish eligibility. In addition, the services outlined in the

new business plan shifted from the broad range of market research and financial analysis services outlined in the initial business plan to a more focused plan to provide financial planning consulting services such as, "providing expert guidance of financial planning and risk management, to investment advisory services, offering personalized investment strategies and portfolio management," to employer clients to make informed financial decisions. Furthermore, the new business plan outlines financial forecasting of sales and employment of staff that did not exist in the initial business plan. On appeal, the Petitioner cannot materially change aspects of the proposed position including the occupation in which he will be employed, and the nature of the proposed endeavor that he intends to pursue. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). Because the new business plan, filed for the first time on appeal, presents a new set of material facts, it cannot establish eligibility, and we need not address it further. *See* 8 C.F.R. § 103.2(b)(1); *Katigbak*, 14 I&N Dec. at 49; *Izummi*, 22 I&N Dec. at 176. Instead, we will review whether the initial business plan and supporting documentation establishes that the proposed endeavor has national importance.

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. As it relates to the Petitioner's experience and ability claims, those relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. Moreover, the Petitioner must establish the national importance of his business rather than the importance of financial services, immigration, and entrepreneurism.[2] Further, "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.* The broader implications of the proposed endeavor, national and/or international, can inform us of the proposed endeavor's national importance. That is not to say that the implications are viewed solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. And 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.

Moreover, 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. 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. We recognize the overall value of providing market research and financial services; however, the evidence does not sufficiently demonstrate that the Petitioner's specific undertaking stands to have an impact beyond the organizations and clients he would serve, or that his proposed work would otherwise have broader implications for the market research and financial industries or initiatives. Specifically, the Petitioner outlines an extensive list of short-term and long-term goals that are general and broad in scope and delve into multiple areas in the industry; however, the record does not establish with specific, probative

[2] The Petitioner's contentions and submissions of industry articles and reports relates to the substantial merit of the proposed endeavor rather than the national importance.

information how the Petitioner's services would have broader implications beyond his clients' growth and possible ripple effects to companies working with the client companies. The record does not establish the Petitioner has plans to introduce novel methodologies or techniques that may be disseminated to or adopted by others operating in the field or industry, or otherwise articulate how he will contribute to research and development of the market research and financial industries as a whole. Here, the record does not show through supporting documentation how his services stand to sufficiently extend beyond his prospective clients to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Further, the Petitioner has not sufficiently 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 indicated in the initial business plan that his wealth of experience to the United States and American businesses will create a ripple effect of economic contributions and job creation. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the third prong of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory 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 is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the *Dhanasar* analytical framework's requisite first prong, we conclude that he has not established that 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.

ORDER: The appeal is dismissed.