U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 33959922

Date: SEP. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a pastoral psychology and theologist professional, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 Petitioner established he was an advanced degree professional, but had not demonstrated 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. 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.

The Petitioner stated that he will "enhance the quality of life for the elderly, promoting their literacy, mental health, and overall well-being," and their spiritual needs, by utilizing his expertise in occupational therapy, community engagement, educational leadership, and his background in pastoral psychology. In response to the Director's request for evidence (RFE), the Petitioner submitted a business plan, dated after the current petition was filed, that indicated he will establish and manage the Family Center that will provide counseling and therapy services to the elderly, children, adolescents, and families. The business plan noted that the Family Center will deal with issues of substance abuse and rehabilitation, mental health, depression, divorce, elderly counseling, and spiritual guidance.

In the denial, the Director quoted the Petitioner's statements and identified numerous deficiencies in the evidence and explained specifically why the evidence did not establish the Petitioner's eligibility under the *Dhanasar* framework. The Director determined that the Petitioner's business plan and RFE response constituted an impermissible material change to his proposed endeavor. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS

requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Although the Director concluded that the Petitioner made a material change to the proposed endeavor, he provided a thorough analysis in the decision of the proposed endeavor as described in both submitted business plans. On appeal, the Petitioner submits a brief which generally reiterates the benefits of his profession and his qualifications and contends that he has established the national importance of his proposed endeavor but does not provide any new evidence or arguments which overcome the Director's determination.

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director thoroughly reviewed, discussed, and analyzed the Petitioner's national importance claims under the first prong of *Dhanasar*, including his personal statements and business plans, his job experience and skills, and the claimed economic impact of his proposed endeavor.

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 family counseling services and entrepreneurship. 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." *Id.* at 889. 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.* Also, "[a]n endeavor that has particularly 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.

On appeal, the Petitioner states that his proposed endeavor of providing family counseling services has national importance because it is essential for promoting mental health, enhance familial relationships, ensure the well-being of communities and help underprivileged families. In addition, the Petitioner notes that the Family Center will lead to employment opportunities that will in turn aid in U.S. economic growth. However, as noted by the Director, the Petitioner does not provide sufficient details, and the record does not adequately show through supporting documentation, how the Petitioner's business and services stand to sufficiently extend beyond his prospective clients and families to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. 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.

Because the Petitioner did 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, as a matter of discretion.[1] Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[2]

**ORDER:** The appeal is dismissed.

[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).

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