U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33940934

Date: SEP. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an ophthalmologist and entrepreneur, 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 Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding that the Petitioner had not established 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. 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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 for the EB-2 classification as an advanced degree professional based on his title of specialist in ophthalmology degree from Brazil. The issues on appeal are whether the Petitioner has met the three prongs of the Dhanasar framework to establish he merits a discretionary waiver of the job offer requirement in the national interest.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. Matter of Dhanasar, 26 I&N Dec. at 889.

While the Petitioner did not submit a statement explaining his proposed endeavor, he did submit a business plan with his initial filing. According to the business plan, the Petitioner intends to serve as chief executive officer (CEO) of his sole proprietorship, a Florida based ophthalmology clinic specializing in eye care with an emphasis in prevention of adult and child blindness.

The endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. Id. The Petitioner asserts his endeavor will impact health, science, business, and entrepreneurship and provided a business plan and articles substantiating his assertion and reflecting that his proposed endeavor falls within one or more of the areas contemplated by Dhanasar. The Petitioner has therefore established the substantial merit of his proposed endeavor, and we withdraw the Director's determination to the contrary.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id. In Dhanasar, we noted that, in assessing national importance, "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 at 890. 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.

According to relevant portions of the Petitioner's initial business plan, he intends to help the country deal with the physician shortage; offer specialized services to American citizens and permanent residents at competitive prices to ensure no American is left without treatment; boost the economy by employing Americans and generating tax revenue from his business. He described his five-year plan of hiring staff to perform clinical services, including three ophthalmologists, totaling 15 employees, including himself. His plan estimated paying 1.1 million in taxes by year five. In response to the Director's request for evidence (RFE), the Petitioner provided an updated business plan, which added, in relevant part, that he intends to open his business in [redacted] Florida, his business will have the latest technological advances, provide for tourists, and will host community events focused on eye health.

The Director reviewed the record, which included the self-petitioner's business plan, an updated business plan, educational and professional credentials, a curriculum vitae, articles concerning ophthalmology, and recommendation and support letters. The Director found the evidence provided placed considerable emphasis on the Petitioner's professional experience and achievements, as well as on the importance of the position, field, and industry rather than on the national importance of the Petitioner's proposed endeavor. The Director determined that the Petitioner had not established that the specific work he proposes to undertake will offer original innovations that will contribute to the ophthalmology field more broadly. The Director further determined that even considering the Petitioner's claimed potential for employment of U.S. workers and resulting economic ripple effects, the evidence did not sufficiently demonstrate that the Petitioner's proposed entity would operate on such a scale as to rise to the level of national importance.

On appeal, the Petitioner asserts that the Director did not adequately or meaningfully address the evidence submitted with the petition. However, the Petitioner only identifies his business plan as not being properly evaluated. The Petitioner asserts his business plan contained well-funded economic projections of his business, demonstrated his know-how and entrepreneurial success in his own ophthalmology clinic in Brazil, explained how he intends to develop his research in the United States and how his work itself brings forth innovative methods in ophthalmology.

Our de novo review indicates the Director properly considered the relevant evidence, including Petitioner's business plan and updated business plan (business plans), and we agree with the Director that the Petitioner has not established the national importance of his proposed endeavor. The business plans stated he intends to deal with physician shortages and describe hiring three ophthalmologists. However, his business plans do not specify how he intends to reduce physician shortage at a level commensurate with national importance. Further, the alleged shortage of occupations or occupational skills are directly addressed by the U.S. Department of Labor through the labor certification process and does not automatically render the Petitioner's proposed endeavor nationally important under the Dhanasar framework.

On appeal, the Petitioner claims that his business plans described his intention to develop his research in the United States and how his work brings forth innovative methods in ophthalmology. The Petitioner's business plans discussed the clinic's mission and services, such as offering procedures like "LASIK" or "PRK," and described, for example, offering specialized services to American citizens and permanent residents at competitive prices to ensure no American is left without treatment, using the latest technological advances, caring for tourists in the [redacted] Florida area, and hosting community events focused on eye health. However, the Petitioner's business plans did not explain or address how his methods and strategy are innovative, did not describe the future research the Petitioner would perform, and did not explain how his research and his clinic's proposed methods of treatment and engagement with the community would improve or advance the field to have national or global implications within the ophthalmology field. Id at 889.

Further, we acknowledge the Petitioner's business plans described boosting the economy by hiring 14 employees in five years and paying 1.1 million in taxes by year five. However, the Petitioner did not present any supporting evidence corroborating the assertions and projected figures in his business plan. Moreover, the Petitioner did not demonstrate his business plans' claimed revenue, employment

projections, and tax contributions, even if supported, would provide substantial economic benefits to the [redacted] Florida region or the U.S. economy at a level commensurate with national importance. For these reasons, the record does not demonstrate that, beyond the limited benefits provided to his prospective clients and employees, the Petitioner's proposed endeavor has broader implications in the ophthalmology field or that it has the significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area for instance, rising to the level of national importance.

We acknowledge the remaining evidence the Petitioner submitted, which predominantly demonstrates his past experience, work history, and skills as an ophthalmologist. However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the Dhanasar framework, which relates to whether an individual is well-positioned to advance the proposed endeavor and therefore "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. Here, the issue is whether the specific endeavor that he proposes to undertake has national importance under Dhanasar *'s* first prong, which focuses on the proposed endeavor itself and its prospective impact.

The Petitioner also added additional endeavors in his response to the RFE, which the Director determined materially changed the proposed endeavor and were therefore not considered in the analysis of *Dhanasar's* three prongs. While the Petitioner's original filing identified his proposal to be the CEO of an ophthalmology clinic, his updated business plan added that the Petitioner's company would also encompass consulting services to health professionals, physicians and private clinics in need of specialized knowledge in ophthalmology care and ways of automating their work and ensuring a proper diagnosis through a highly skilled team of professionals. According to the updated business plan, the Petitioner's company would also offer consulting services in research and development, training services for medical professionals and clinics, and telemedicine and remote consultations.

On appeal, the Petitioner argues that his proposed endeavor has not materially changed because a CEO can perform multiple roles and his updated business plan explains the services he intends to provide under that role. Even if we accept the Petitioner's argument that the updated business plan provided more information about his proposed endeavor, we conclude that the Petitioner did not provide sufficient details regarding his consulting endeavor to establish national importance as contemplated by Dhanasar. The updated business plan only included a brief description of the consulting services. The remaining parts of the business plans included a description of the ophthalmology industry, the Petitioner's qualifications and work history as an ophthalmologist, and the marketing and social media presence. The Petitioner does not explain, and the record does not show what national or global impact his consulting services would have on the industry, and although the business plans also discuss the personnel to be hired and projected growth, the record does not support such projections or otherwise show that his endeavor would have substantial positive economic effects as contemplated by Dhanasar. Id. at 890.

Accordingly, the Petitioner has not demonstrated the national importance of the proposed endeavor under the first Dhanasar prong, and therefore eligibility for a national interest waiver. As our finding is dispositive of this appeal, we reserve the Petitioner's arguments regarding whether he has demonstrated the second and third Dhanasar prongs. 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 an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the Dhanasar analytical framework and therefore has not established that he merits, as a matter of discretion, a national interest waiver of the job offer requirement attached to this classification.

ORDER: The appeal is dismissed.