U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33967508

Date: SEP. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a physical fitness specialist and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an as an individual of exceptional ability as well as a national interest waiver of the job offer requirement attached to this 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 the Petitioner did not establish eligibility as an individual of exceptional ability or for a national interest waiver. 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.

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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

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,[3] 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
- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

II. ANALYSIS

A. EB-2 Visa Classification

The Director determined that the Petitioner does not qualify as an individual of exceptional ability. Since the evidence in the record does not establish by a preponderance of the evidence that the Petitioner is eligible for, or otherwise merits, a national interest waiver as a matter of discretion, we will reserve the issue of whether he qualifies for EB-2 classification as an individual of exceptional ability for future consideration should the need arise.[4]

B. Substantial Merit and National Importance

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." Id. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual.

We agree with the Director's conclusion that the proposed endeavor has substantial merit as it falls within the above-mentioned range of areas of substantial merit. Therefore, we will first identify the

[3] 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).

[4] See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("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 alternate issues on appeal where an applicant is otherwise ineligible).

Petitioner's endeavor as shown in the record and then evaluate the Petitioner's evidence in support of the endeavor's national importance.

The Petitioner asserts that his proposed endeavor is to operate a wellness consultancy company, "whose primary focus is empowering families and individuals by fostering healthy lifestyle habits that create lasting, positive change," with an "innovative approach combin[ing] expert nutritional guidance with tailored exercise programs to inspire a transformational journey towards optimal wellness." He notes that Center for Disease Control and Prevention (CDC) cites regular physical activity as one of the most important things an individual can do for their health and the most common barriers identified by the CDC to physical activity include are lack of time, social support, lack of energy and motivation, high costs, and lack of facilities. He maintains that his company "will address all those barriers providing personalized services adjusting to the clients' schedule, guidance and follow up to support their fitness goals, offering different plans to adjust to their budgets" as well as "providing services online as he has been doing since 2020 for clients in 6 different countries." He contends that his company will "tackle the obesity and overweight epidemic in the United States and promote healthier lifestyles for its citizens" as well as "enable the implementation and advancement of health policies for the betterment of the population," including the Health People initiative, a Department of Health and Human Services (DHHS) program designed to guide national health promotion and disease prevention efforts to improve the health of the nation, DHHS's Physical Activity Guidelines for Americans, and the National Strategy on Hunger, Nutrition, and Health.

On appeal, the Petitioner contends that the evidence he submitted establishes by a preponderance of the evidence that he "is an individual of exceptional abilities who can make valuable contributions to the U.S., the American economy, and the wellbeing of American citizens through his proposed endeavor. He will stimulate the growth of the American economy and positively impact areas identified by the Government as of national importance."

Here, the Petitioner relies primarily on the societal interest improving overall health and disease prevention through physical activity and combating obesity. However, this misapplies the Dhanasar framework. While we acknowledge that it may be reasonable to conclude that physical fitness specialists can develop wellness programs that may prevent obesity and promote healthy lifestyle habits, we agree with the Director in concluding that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his client base to impact the field of physical fitness or the U.S. physical fitness and health industry more broadly at a level commensurate with national importance – and given the commonality of the position, a single physical fitness specialist does not usually have national importance. Likewise, the record does not support the Petitioner's assertion that his endeavor will "tackle the obesity and overweight epidemic in the United States" or meaningfully address obesity rates on a scale commensurate with national importance.

Further, while the Petitioner has provided documentation discussing the importance of physical fitness, this documentation does not discuss the Petitioner's endeavor, nor does it establish how the benefits provided to his clients would result in broader national implications and generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, while we acknowledge the submitted expert opinions; the issue here is whether the Petitioner has demonstrated

the national importance of his proposed endeavor, and expert opinions are relied upon in determining whether an individual is well positioned to advance the proposed endeavor and not in demonstrating the national importance of the proposed endeavor. As such, the Petitioner has not established that his proposed endeavor reaches a level of national importance to warrant a waiver of the job offer requirement.[5]

ORDER: The appeal is dismissed.

[5] As the Petitioner has not established the national importance of his proposed endeavor, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs. Supra at INS v. Bagamasbad.