U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15959296

Date: AUG.24, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a chief executive officer, seeks second preference 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 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 the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting eligibility for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).
[2] *See also Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director also determined that the Petitioner had established that the proposed endeavor met the substantial merit portion of the first prong set forth in the *Dhanasar* analytical framework. The Director's decision then provided a well-reasoned explanation as to why the Petitioner does not meet the national importance portion of the first prong.

Therefore, upon consideration of the entire record, including the arguments made on appeal, we adopt and affirm the Director's decision with the comments below.[4] *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

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." *See Dhanasar*, 26 I&N Dec. at 889. We further indicated that "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*. 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.

According to the Petitioner's business plan, his proposed endeavor is to "expand" his business from damage remediation "into Fire Protection and Sprinkler Services" and to generally "offer 1) Design and Engineering Services, 2) Installation Services, and 3) Inspections and Repairs." His "target customers" include "general contractors, architects, developers, and property owners." The Petitioner also projects a "gross margin" of $1,260,929 and "earnings before interest, taxes, depreciation, and amortization" of $824,388 in year five. Finally, he indicates that there will be seven employees, in addition to the chief executive officer.

On appeal, the Petitioner argues that the "economic impact . . . is only one aspect that may be favorable to a petition, but is not required," and we agree. However, *Dhanasar* provided examples such as "endeavors related to research, pure science, and the furtherance of human knowledge" which "may

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[4] While we may not discuss every document submitted, we have reviewed and considered each one.

qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States." Here, the Petitioner has not demonstrated that the focus of his company's work is similar to any of the listed endeavors, such that he would meet the national importance portion of the first prong.

As discussed by the Director, the record does not establish that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation as contemplated by *Dhanasar*. Although the Petitioner provided information regarding projected income and staffing levels, he has not established that they stand to provide substantial economic benefits to Florida or the United States. Nor has the Petitioner established that the area where the company 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 or business activity. Further, the Petitioner has not demonstrated that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects." *Id.* at 890. For example, the Petitioner has not demonstrated that the projected taxes to be paid in the next five years will substantially affect either Florida's or the United States' tax revenue or the U.S. or Florida economy more broadly at a level commensurate with national importance.

On appeal, the Petitioner relies on previously-submitted "statistics" from a variety of sources, including the National Fire Protection Association, that he contends "support[] the importance of fire protection to U.S. persons, the economic impact of fire damage and prevention, and about small business investment in the U[nited] S[tates]." He also cites to information from the Federal Emergency Management Agency to argue that his proposed "endeavor of fire and disaster prevention and recovery is in line with national initiatives." While the information may aid in establishing the proposed endeavor's substantial merit, it does not demonstrate the national importance of the Petitioner's planned business. As previously stated, to determine national importance, we focus on the "the specific endeavor that the foreign national proposes to undertake," not the industry. *Id.* at 889. The Petitioner has not adequately established how his ownership of a company, even one that he claims provides services that are "in line with national initiatives," satisfies the national importance prong under the *Dhanasar* analysis. The Petitioner bears the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361.

The Petitioner also relies on two letters described as being from "government entities who acknowledge the impacts his services have had or will have in a broader context." The letter from [redacted] County Commissioner, [redacted] simply states that "based on his resume, . . . [the Petitioner] [p]ossesses a valuable skill set in this area" and "his contributions in the area of safety could be invaluable." The letter from [redacted] is complimentary of the Petitioner's "moral character" and indicates that his homeowner's association will consider using the Petitioner's services. Neither letter, however, establishes the national importance of the proposed endeavor.

We note that in *Dhanasar*, the Petitioner had "developed a [redacted] model of a [redacted] propulsion engine, as well as a novel [redacted] method for accurately calculating [redacted] air flow." He not only provided "probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of [redacted] propulsion research as it relates to U.S. strategic interests," but also "media articles and other evidence

documenting the interest of the House Committee on Armed Services in the development of [redacted] technologies and discussing the potential significance of U.S. advances in this area of research and development." Here, the Petitioner's focus on the risks of fires and natural disasters in general does not address how the specific aspects of the proposed endeavor and the performance of the planned activities would have broader implications, rising to the level of national importance as contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 889.

In *Dhanasar*, we determined that 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. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clients and their projects to impact the industry more broadly at a level commensurate with national importance. Nor has he shown that the particular work he proposes to undertake offers original innovations that contribute to advancements in his industry, rather than just affecting projects involving his company, or otherwise has broader implications for his field. For all these reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does 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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding the remaining issues. *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 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 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.