U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22718062

Date: OCT. 28, 2022

Appeal of Texas Service Center Decision

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

The Petitioner 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 is qualified as an individual of exceptional ability, but that he 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 that he is eligible for a national interest waiver.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (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. –
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> (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.
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> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . the 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.

Furthermore, 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 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

[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 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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 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.

In denying the petition, the Director concluded that the Petitioner had not demonstrated the national importance of his particular proposed endeavor.[4] The Director explained that the Petitioner's evidence did not show that his proposed work as a freestyle wrestling athlete and coach would have broader implications at a level indicative of national importance. For the following reasons, we agree.[5]

With respect to his proposed endeavor, the Petitioner indicated before the Director that he "seeks employment in the field of freestyle wrestling [and will] increase the athletic competitiveness of U.S. athletes on the national and international level." He stated that he "plans to represent [redacted] University's [R-'s] [redacted] Wrestling club ["the club"] and compete at national wrestling competitions hosted by USA Wrestling and NCAA Wrestling." He asserted that through winning wrestling competitions he will "increase the Freestyle Wrestling teams' competitiveness, by simply motivating [other] athletes to outperform [him]." He also presented a "resident athlete" employment contract with the club through which he will compete in wrestling matches for the club and also "assist with fundraising and making [public] appearances for the club and [R-]."

The Petitioner also stated that he will be engaged in coaching activities for other freestyle wrestling athletes. The record included letters of support from wrestling athletes and coaches who contend that the Petitioner's proposed work "will substantially benefit the United States." For instance, Head Wrestling Coach at R-, [redacted] indicated in his letter that the Petitioner has "a unique ability to share his passion for the sport of wrestling", is a "fan favorite", "trains with the [redacted] University wrestling program. . . . and USA wrestling," and "continues to train alongside other Olympic and World hopefuls." He explained that the Petitioner "is a member of our Club, competing and providing guidance to our athletes and coaches," asserting that "the positive impact of [the Petitioner's] expertise will be felt nationwide due to the extensive participation of our athletes in major national-level competitions where they will excel and challenge others."

In another letter, [redacted] from the organization, Athletes in Action, writes that in 2018 the Petitioner came to the United States as a "junior wrestler" and stayed at his home while he trained with wrestlers at the University of [redacted] and [redacted] College." He contends that

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] The Director also determined that the Petitioner's proposed endeavor has substantial merit under *Dhanasar's* first prong, and that he is well-positioned to pursue this endeavor under its second prong. He further concluded that the Petitioner had *not* demonstrated 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 under *Dhanasar's* third prong.

[5] While we may not discuss every document submitted, we have reviewed and considered each one.

the Petitioner "in every way exemplifies the best aspects of the [redacted] school of wrestling. . . . he has taken the time to go to different teams and share his technique with them, asking for nothing in return."

The Director determined that the reference letters and the other information provided by the Petitioner about his proposed endeavor were not sufficient to demonstrate its national importance. Specifically, the Director concluded that the Petitioner had not sufficiently described his plans for accomplishing his goal of "increas[ing] the athletic competitiveness of U.S. athletes on the national and international." The Director concluded that while the record reflects his intention to compete on behalf of R-'s wrestling club he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. He noted, for example, that the Petitioner had not demonstrated that his involvement as a competitor stands to impact R-'s wrestling club or his sport at a level consistent with having national importance, or that the implications of such work stand to impact the sport more broadly. Furthermore, the Director stated that the Petitioner had not shown that his proposed endeavor offers broader implications, such as a significant potential to employ U.S. workers, or substantial positive economic effects.

On appeal, the Petitioner maintains that his proposed endeavor has national importance, stating:

> [The Petitioner] is a professional Freestyle wrestler and has vast experience in wrestling instruction and training areas. As confirmed by experts, [his] work is in demand and of national importance in the field of health science. . . . Upon being granted permanent residency, [he] will implement his knowledge in wrestling training to clients in the area of sports and fitness in the United States. Through his excellent foundation as a Freestyle Wrestler, he will coach people to accomplish their goals in the health and sports field. Ultimately, he will implement his unique methods and training to educational institutions and other fitness programs in the United States.

The Petitioner emphasizes the significance of his wrestling knowledge, skills, and experience on appeal, but collectively considering the evidence of record, we conclude that the evidence does not sufficiently explain the national importance of his proposed work under *Dhanasar*'s first prong. The Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong. Nonetheless, while we agree with the Director that the record adequately shows the substantial merit of the Petitioner's proposed work, but for the reasons discussed below, the evidence is not sufficient to demonstrate the national importance of the competitive wrestling and coaching endeavors he proposes to undertake.

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. In *Dhanasar*, we further noted 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.

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. Although the Petitioner contends that his participation in athletic competitions will motivate U.S. wrestling team athletes to outperform him, he has not offered sufficient information and evidence to demonstrate that his involvement as a competitor stands to impact these wrestling teams or his sport at a level consistent with having national importance. Nor has he shown that his proposed U.S. coaching work is at a level that would offer national implications for his sport, or that the implications of such work stand to impact the sport more broadly, as opposed to being limited to his wrestling students.

For example, the some of the reference letters and the Petitioner's own statements allude to the significance of the Petitioner's "uniquely effective training methodologies and techniques."[6] Notably, the Petitioner has not provided evidence sufficient to demonstrate what his unique wrestling techniques and training programs actually are; nor has he shown that his methodologies have been widely adopted by others engaged in his sport, or that they otherwise prospectively stand to broadly influence the freestyle wrestling sport. 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. The Petitioner's proposed work therefore 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. Further analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[7]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established 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.

[6] *See*, for instance, Head Coach [redacted] letter.

[7] It is unnecessary and would be an unwise use of the government's time and resources to analyze the remaining independent grounds when another is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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).