U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26932831

Date: JUNE 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a financial advisor, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the 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 a national interest waiver, a petitioner must first show eligibility 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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates EB-2 eligibility, they must then establish 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 USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *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).

- 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.

II. ANALYSIS

The Director made no determination as to whether the Petitioner qualifies as a member of the professions holding an advanced degree. The decision only addressed the Petitioner's eligibility for a national interest waiver; the Director concluded that the Petitioner had not satisfied any of the three *Dhanasar* prongs. Therefore, the issue for consideration on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

In his native Brazil, the Petitioner earned a bachelor's degree in business administration in 1999 and a *lato sensu* certificate in accounting and financial management in 2002. In 2002, he started an "administrative, financial and tax consultancy company," also in Brazil. From 2002 to 2014, he "worked as an independent consultant" for a plastics company, performing tasks such as coordinating financial departments, preparing the budget and financial documents, and negotiating the purchase of raw materials. Since 2016, he has divided his time between his consultancy company and a related entity that provides "administrative, financial, tax and company recovery services." The Petitioner entered the United States in 2020 as a B-1 nonimmigrant visitor for business.

On the petition form, the Petitioner identified his occupation as "personal financial advisor," but the record indicates that he seeks to work as a consultant for businesses, rather than individuals. In a statement submitted with the petition, the Petitioner described his proposed endeavor:

> My career plan is to open my own financial and business management consultancy company . . . , providing tax, financial, cost and investment management services in the U.S. . . . , primarily serving U.S. small businesses. . . . Additionally, the company will serve U.S. hospitals, providing hospital and business consulting services in the implementation of the Patient Blood Management Program (PBM), designed by the Society for the Advancement of Blood Management (SABM), with proven results in cost reduction and improved patient outcomes.
>
> I plan on hiring a team of U.S. workers, experts in business development and international trade to boost the U.S. trade surplus with Brazil, as well as encouraging foreign direct investment from Brazil to the United States. Moreover, I will hire and train a specialized management team to work in the cost reduction implementation of the PBM program for hospitals in the U.S., thereby, significantly reducing costs for the hospitals and impacting the U.S. economy.

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

In the denial notice, the Director concluded that the Petitioner had not established the national importance of the proposed endeavor. The Director stated:

> [T]he record does not show that the petitioner's proposed endeavor stands to sufficiently extend beyond an organization and its clients to impact the industry more broadly. The petitioner has not sufficiently demonstrated that the particular work he proposes to undertake offers original innovations that contribute to advancements in the industry, or otherwise has broader implications for the field in the United States.

On appeal, the Petitioner asserts that his business plan and personal statement "allow[] concrete projections of the benefits he may offer to the U.S." The Petitioner cites information already in the record. Below, we will consider this information and explain why we agree with the Director's conclusions.

A business plan submitted with the petition indicates that the Petitioner's company will have "(2) Major Business Lines . . . One as a Specialized Business Consulting Company focused on International Trade between the United States and Brazil . . . [and] A Second as a Hospital and Business Consulting expert on Hospital Cost Reduction through Implementation of the Patient Blood Management Program for Hospitals." The business plan cites statistics about the overall size and impact of "the Management Consulting Industry," but such aggregate figures do not establish the impact of individual consulting businesses, such as the one the Petitioner proposes to establish.

The business plan discusses PBM programs, and the Petitioner referred to PBM as a "business methodology," but materials in the record, including a policy brief from the World Health Organization, consistently refer to PBM as a health care strategy to be addressed and implemented by medical institutions, government authorities, and other stakeholders, rather than business consultants.[2]

The business plan does not fully explain the relevance of some of the cited statistics and other information. For instance, the plan's list of "Key Success Factors" for "management consulting in the U.S." includes the observation that "[d]entists and hygienists should be licensed." The business plan does not otherwise address dentistry.

An 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. *Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner's business plan indicates that the Petitioner seeks to "help to fuel small business growth in historically underutilized business zones." The business plan does not define the term "historically underutilized business

[2] The record shows that the Petitioner took a course related to "Blood Management" in 2019, but the course certificate does not indicate that this was a business course. Rather, the intended audience was health care workers. The certificate is an "Attendance Certificate of Continuing Medical Education" from the Postgraduate Institution for Medicine, an institution "jointly accredited by the Accreditation Council for Continuing Medical Education (ACCME), the Accreditation Council for Pharmacy Education (ACPE), and the American Nurses Credentialing Center (ANCC), to provide continuing education for the healthcare team."

zones," and therefore it does not show that the term refers to areas with low business activity. Information in the business plan indicates that the term relates to the allocation of "federal contract dollars." The plan also indicates that the Petitioner would first establish his business in Florida, expanding over five years into Texas, New York, and California, because those are "the States with the most business concentration in the U.S."

The business plan projects that the Petitioner's business will employ 32 employees in four states, paying them a total of $5.7 million in wages in the first five years of operations. Most of the positions are designated as part-time. The Petitioner did not establish that this level of employment dispersed over a large geographical area would have the substantial economic effects contemplated in *Dhanasar*.

In a request for evidence (RFE), the Director asked the Petitioner to submit evidence to show that the impact of the proposed endeavor extends beyond benefit to the Petitioner's customers. In response, the Petitioner submitted documentation showing that he filed articles of organization for his Florida business in May 2022, a few days after he received the RFE. The Petitioner repeated his intention "to help fuel small business growth in historically underutilized business zones" and to help hospitals implement PBM, but he reduced the emphasis on U.S. businesses seeking to conduct trade with Brazil. The Petitioner provided figures indicating that his work has benefited individual customers, but does not show the wider benefit beyond those clients. As such, the information does not establish the "broader implications" contemplated in *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner asserts, on appeal, that his "knowledge and experience of the Brazilian culture" make him "a potential asset to any U.S. company planning to operate there." The Petitioner cites general statistics about international trade and the Brazilian economy, but does not quantify the resulting benefit from his proposed endeavor. His background as a consultant in Brazil may be relevant to how well positioned he is to advance the proposed endeavor, but it does not inherently lend national importance to that endeavor. The Petitioner must establish the importance of his specific endeavor, rather than the overall area, such as international trade, that encompasses that endeavor.

We agree with the Director that the Petitioner did not establish that the prospective economic impact of his proposed endeavor, including employment, tax revenues, and benefit to customers, would be substantial enough to demonstrate national importance under *Dhanasar*. Detailed discussion of the remaining *Dhanasar* prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the other prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.