U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27439991

Date: JUN. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a language and literary musicalization professor, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 had not established eligibility for 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. 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 establish eligibility for a national interest waiver, petitioners must 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. Section 203(b)(2)(B)(i) of the Act. In addition, petitioners must show the merit of 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if:

- 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.

[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).

II. ANALYSIS

As it relates to the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor.[2] *Dhanasar*, 26 I&N Dec. at 889. At initial filing, the accompanying cover letter stated the Petitioner "endeavors to work as a Professor of Language and Literary Musicalization in the United States, using an innovative program he has created to teach Portuguese Language through songs and poetry." In addition, the Petitioner submitted a statement indicating:

> My main objective as an educator and the creator of [redacted] is to spread Portuguese language and culture in a true, light, didactic way to that it may be used for the benefit of each student, from those needing to reconcile with their Brazilian roots to those who want to be comfortable making business transactions with Portuguese speakers. This is why Schools and NGOs are very receptive. There is significant interest coming from an increasing number of Brazilian immigrants who actively contribute to the American economy.
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> . . . .
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> Beyond working for the [redacted] School Board, I want to expand my programs to improve the American classroom and raise awareness of this teaching style through live performances for the whole family. Moving forward, I want to show the United States the benefits of teaching language which is often regarded as a melting pot of different cultures and nationalities. I am already working on music to help immigrants build a relationship with the English language, so that we can, in addition to promoting Brazilian culture, create songs that help them assimilate to the American culture. The program I have created has the ability to enhance interpersonal relationships, which inspires me as an educator to disseminate this new teaching style to improve the lives of as many people as possible.

In response to the Director's request for evidence (RFE), the Petitioner's cover letter stated:

> [The Petitioner] has created his own employment opportunity in the United States as the Language and Literary Musicalization Teacher of his Florida-based company, [redacted] contributing to the education system's strategies to allow students to make up their interrupting education by increasing the amount and quality of learning time through the online and physical tutoring lessons, workshops and showcases he offers throughout the United States.

[2] The Director informed the Petitioner in the request for evidence (RFE) that he qualified for the underlying EB-2 visa classification as a member of the professions holding an advanced degree.

Moreover, the Petitioner provided a "Statement Professional Declaration" indicating:

> In 2020, I created by Florida-based enterprise [redacted] [redacted], in the United States to contribute to the U.S. Education System through Literature and Music that enhances language skills and literacy, employing my Literary Musicalization methodology and disseminating my program [redacted] at bilingual schools, considering that Portuguese is the third most widely spoken language in Florida, after English and Spanish.

In addition, the Petitioner submitted a business plan for [redacted] dated July 2022, reflecting the "[c]ompany will operate a Portuguese language teaching school that will initially offer Portuguese learning courses through music through both in-person and online classes."

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner maintains:

> [He] has offered far more compelling evidence that what many other Petitioners of EB-2 National Interest Waiver Visas are able to provide, many only capable of offering plans for the future, whereas he has provided proof of his current position and potential prospective impact to illustrate his capacity in which he intends to work in the United States.

At the outset, the Petitioner did not cite to any corroborating evidence to support his appellate assertion, nor did the Petitioner explain how he is aware of the capability of other petitioners to only offer plans for the future. Moreover, as indicated above, the Petitioner initially claimed "to expand [his] programs to improve the American classroom and raise awareness of this teaching style through live performances for the whole family" and "to disseminate this new teaching style to improve the lives of as many people as possible" without any mention of owning and operating [redacted] [redacted] In fact, the Petitioner developed the business plan for the company after the Director issued the RFE. Although the record shows the Petitioner filed the articles of organization with the Florida Secretary of State approximately three weeks prior to the filing of the petition, the Petitioner did not make a claim to own and operate [redacted] as part of his initial proposed endeavor. Rather, the Petitioner discussed the teaching and promoting of his [redacted] program rather the owning and operating his [redacted] company, a materially changed proposed endeavor. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of opening and operating [redacted] [redacted]

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 specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner

references his submissions of articles regarding the benefits of music, the importance of education, and the promotion of literacy through music, including an expert opinion letter from [redacted] the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing his particular services in teaching his music literacy program rather than the importance of music and education. In *Dhanasar*, we 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. While the Petitioner also contends the shortages of teachers, such occupational deficiencies are directly addressed by the U.S. Department of Labor through the labor certification process and are not a basis for national importance under the first prong of the *Dhanasar* framework.[3]

Moreover, the Petitioner argues that "[b]y teaching American children Portuguese as a second language, he is enriching their cultural knowledge and opening up better professional opportunities from them in the future." 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. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how teaching his music literacy program to his students largely influences the field and rises to the level of national importance. In *Dhanasar*, we determined 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. Likewise, the record does not show through supporting documentation how his program and services stand to sufficiently extend beyond his prospective students or schools that may utilize his services, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner did not demonstrate how his initial proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to his music program, the record does not show any benefits to the U.S. regional or national economy resulting from his music literacy program would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

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 second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[4]

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[3] Similarly, [redacted] makes broad claims regarding the education sector in the United States, foreign language workers, national initiatives, societal welfare impacts, and labor shortages without articulating how the Petitioner's specific, proposed endeavor has national or global implications rather than limited to his students who experience his music literacy program.

[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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 that he has not demonstrated eligibility 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.