U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24829781

Date: MAR. 09, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur with experience in the retail sector, seeks employment-based second preference (EB-2) 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 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 record did not establish that the Petitioner merits, as a matter of discretion, a national interest waiver of the EB-2 classification's job offer requirement. 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, 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. *See* section 203(b)(2) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 U.S. Citizenship

and Immigration Services (USCIS) may, as matter of discretion[1], 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.

II. ANALYSIS

The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree.[2] The issue on appeal is whether he meets the requirements of the three prongs of the *Dhanasar* analytical framework and otherwise merits a national interest waiver as a matter of discretion.

As a preliminary matter, we will address the Petitioner's assertion that the Director was required to issue a request for evidence (RFE) or notice of intent to deny (NOID) prior to issuing a final decision in this case. The Petitioner maintains that the Director's failure to do so was contrary to USCIS policy and thus constitutes a clear error.

The regulation at 8 C.F.R. § 103.2(b)(8)(iii), provides that if all required initial evidence has been submitted, but the evidence submitted does not establish eligibility, USCIS may deny a benefit request for ineligibility, issue an RFE, or issue a NOID. The Director's authority to deny a petition without first issuing an RFE or NOID is likewise stated in current USCIS policy guidance. *See generally* 1 *USCIS Policy Manual* E.6(F), https://www.uscis.gov/policy-manual (stating that "USCIS has the discretion to deny a benefit request without issuing an RFE or NOID"). Therefore, the Petitioner's assertions are not persuasive.

Further, while the Petitioner indicates that an RFE or NOID would have provided an opportunity "to cure or clarify any issues by presenting additional evidence," we observe that the Director's decision, as required by 8 C.F.R. § 103.3(a)(1)(i), explains the specific reasons for denial and addresses evidentiary deficiencies in the record. The Petitioner therefore had adequate notice and opportunity to address those deficiencies on appeal. As the Petitioner has neither established that the Director committed a procedural error nor submitted new evidence on appeal that the Director should review in the first instance, we will not remand the matter to the Director for issuance of an RFE or NOID.

A. The Proposed Endeavor

The Petitioner received a bachelor's degree in industrial design in Brazil in 1995. The record reflects he has since gained over 20 years of experience as an entrepreneur in the retail flower industry in [redacted]

[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).

[2] The record establishes that the Petitioner holds the foreign equivalent of a bachelor's degree from an institution of higher education in the United States, and that he has at least five years of progressive, post-baccalaureate experience in his specialty. *See* 8 C.F.R § 204.5(k)(3).

[redacted] Brazil, where he served as the founding partner, owner, and CEO of three retail stores between 1995 and 2017.[3]

The Petitioner submitted a professional plan stating his intent to use his expertise and knowledge "in the fields of entrepreneurship, business management, business development, operations management, procurement management, financial management and strategic management" to "help advance the economy in the United States." In describing the proposed endeavor, he indicated he would "provide expert service to U.S. companies" particularly "those doing business or planning on expanding their business internationally."

The Director concluded that the Petitioner did not submit "a detailed description of the proposed endeavor" and we agree. The Petitioner did not identify a particular type or size of company he intends to target as a provider of "expert service," nor did he indicate in what industry sector or geographic region he intends to work. The Petitioner indicated on the Form I-140, Immigrant Petition for Alien Worker, that he intends to work in the United States as an entrepreneur and would be responsible for planning, directing, or coordinating a company's operational activities. However, he did not state or submit evidence that he has established, or has specific plans to establish, his own company in the United States, either as a consultant to other businesses, or as a business owner in the retail sector, where he has gained all of his work experience to date.

In addition to submitting his professional plan, the Petitioner provided an "advisory evaluation" of his eligibility for a national interest waiver from a professor at [redacted] College's School of Business. According to the evaluator, the Petitioner's proposed endeavor will entail starting and growing new business ventures in the U.S. retail flower industry, assisting U.S. companies and investors seeking to enter the Brazilian and Latin American markets, and attracting Latin American investors to the cross-border development potential between the United States and Brazil. We may, in our discretion, use advisory opinion statements submitted in evidence as expert testimony. However, where such a statement is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988).

Here, the writer stated that his evaluation, which includes a description of the proposed endeavor, is "based on documents provided by [the Petitioner]" but it is evidently not based on the same professional plan that the Petitioner provided to USCIS for review. For instance, the Petitioner's professional plan does not mention his intent to start new ventures in the retail flower industry or to attract Latin American investors to the United States. As we are unable to determine the accuracy or reliability of the evaluator's description of the proposed endeavor, our analysis of the endeavor under the *Dhanasar* framework will be limited to the information the Petitioner provided in his professional plan.

[3] The record indicates that the Petitioner has been residing in the United States since May 2017 and was most recently admitted in F-2 nonimmigrant status in July 2018. He does not indicate that he has been employed since re-locating to the United States.

B. First Prong - Substantial Merit and National Importance

The first prong of the *Dhanasar* framework, 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. *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner stated in his professional plan that his endeavor will potentially result in: U.S. job creation and tax revenue; development of business partnerships; expansion of a company's market reach; the negotiation of lucrative contracts and partnerships; new investment opportunities; and networking with industry peers, competitors and prospective clients. In support of his claim that his proposed endeavor has substantial merit and national importance, he submitted eleven industry reports and articles that discuss the importance of entrepreneurship in the U.S. economy, the critical contributions of immigrants to America's start-up economy, and the successes of immigrant and first-generation entrepreneurs who have founded and led Fortune 500 companies. The advisory opinion from the [redacted] College professor similarly emphasizes the impact of immigrant entrepreneurs on the U.S. economy. He also discusses the Brazilian economy, explains why Brazil is already viewed as a major target for expansion for U.S. multinational companies, and states that many more U.S. companies are expected to do business in Brazil to take advantage of market opportunities there.

The Director determined that the evidence was sufficient to established that the Petitioner's proposed endeavor has substantial merit but concluded that the Petitioner did not demonstrate that his proposed work meets the national importance element of the first prong of the *Dhanasar* framework. On appeal, the Petitioner emphasizes that the proposed endeavor is "national in scope," noting that he has already demonstrated "impressive entrepreneurialism," has the skills to "enhance strategic operational, marketing and sales management capabilities within the U.S. business environment," and will therefore "enhance American competitiveness domestically and internationally."

The Director acknowledged the Petitioner's assertion that his proposed endeavor will result in job creation, increased tax revenue and investment opportunities, but emphasized that he did not identify the specific business in which he would be engaged or provide evidence of the economic impact of that business or endeavor. Therefore, the Director concluded that he did not show that his proposed endeavor would have an impact rising to the level of having national importance or that his work as an entrepreneur would have broader implications for businesses in the United States.

The record supports the Director's conclusions. We stated in *Dhanasar* 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. The Director correctly determined that, despite mentioning job creation as a potential impact of his proposed endeavor, the Petitioner did not provide information and evidence to illustrate the number of individuals he expects any proposed new business to hire, train and support. He also did not address how his endeavor would have "substantial positive economic effects" based on job creation, and whether it would impact an economically depressed region. As the Petitioner did not submit a business plan or otherwise specify the type of endeavor he intends to pursue as an

entrepreneur in the United States, he did not support his assertion that his endeavor would be "national in scope" and capable of "enhancing American competitiveness" on a national and international scale.

For the reasons discussed, the Petitioner has not demonstrated that his proposed endeavor would be of national importance, and he therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework. The Director, who did not address the second *Dhanasar* prong, also concluded that the Petitioner did not establish that he is eligible under the third *Dhanasar* prong. While the Petitioner address all three prongs in his appellate brief, a discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve those issues and will dismiss the appeal.[4]

III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[4] *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).