U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28446874

Date: NOV. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a fitness consultant, trainer, and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability. *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 a 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 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. Section 203(b)(2)(B)(i) 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).

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(3).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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." *Id.* 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,[4] 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.[5]

II. EB-2 CLASSIFICATION

Although addressed in a request for evidence (RFE), the Director's decision does not discuss or provide a determination concerning the issue of whether or not the Petitioner qualifies for the EB-2 classification as either an advanced degree professional or as an individual of exceptional ability. Since the record does not establish by a preponderance of the evidence that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.[6]

---

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

[2] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[3] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[4] *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).

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

[6] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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. NATIONAL INTEREST WAIVER

The remaining issue for consideration on appeal 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. 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.

The first prong, 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 initially described his proposed endeavor as follows:

> Upon his immigration to the United States, he intends to advance his career as an Athletic Trainer, evaluating and advising individuals to assist in the recovery from or in avoiding athletic-related injuries and illnesses by maintaining peak physical fitness. His ability to devise effective training programs will serve to improve human health, which will enhance, substantially, the United States health and wellness industry, and therefore the economy.
>
> ...
>
> [The Petitioner's] career plan in the United States is to work making substantial contributions to the sports and health fitness industry through his structured and strategic athletic training programs for various body types with varying degrees of physical ability.
>
> ...
>
> He has extensive experience as a Fitness Consultant and Entrepreneur where his expertise in both fitness and business can help the American population, by combating rising problems of obesity and diabetes among the population.

The Director determined that the proposed endeavor has substantial merit. However, the Director requested additional evidence to demonstrate the national importance of the endeavor. In response, the Petitioner submitted, in part, an updated business plan and an updated statement in which he explains his endeavor as follows:

> [M]y overall proposed endeavor in the United States is to offer my expertise and training methods to private and public American sports organizations and educational institutions, focusing on training athletes and developing their skills and discovering new talent to improve the quality of youth sports, as well as the overall amateur and

> competitive U.S. sports sector. Additionally, I plan to expand two fitness franchise businesses in the U.S. to further contribute to the health and well-being of the American people, as well as the U.S. economy as a whole.
>
> ...
>
> I have also opened a consultation company...to advise large Brazilian sports academies and professionals hoping to expand into the U.S. markets, as well as U.S. companies in need for my skills in the management, administration, and expansion of business units in the fitness industry.

The Petitioner also submitted—both initially and in response to the RFE—numerous articles and reports concerning athletic trainers and public health, the importance of coaches and sports in youth development, the obesity epidemic, and the significance of immigrant-owned businesses in the U.S. economy. The Director concluded that the record did not establish that the proposed endeavor is of national importance.

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. Further, 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. 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.

On appeal, the Petitioner contends he has established, by a preponderance of the evidence,[7] his eligibility for a national interest waiver. The Petitioner submits a brief in which he reiterates his qualifications[8] and emphasizes that his endeavor serves the interests of the White House's initiatives concerning physical fitness and sports.[9] We note that while the Petitioner's endeavor has substantial merit, the potential for a limited contribution to a proclaimed national cause cannot, itself, be considered national in scope. A discussion of the evidence of record as it relates to the Petitioner's eligibility under the first prong of the *Dhanasar* framework follows.

---

[7] *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

[8] We would consider the Petitioner's qualifications in evaluating his eligibility under the second *Dhanasar* prong. We note that the letters of recommendation, while laudatory of the Petitioner's professionalism and capabilities, do not speak to the national importance of the Petitioner's specific endeavor to develop a soccer academy and provide consultancy services for fitness franchises in the United States.

[9] *See* https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/30/a-proclamation-on-national-physical-fitness-and-sports-month-2021/, accessed October 2, 2023.

The business plan initially included in the record describes the Petitioner's intention to open a sports academy in [redacted] Florida, focused on teaching soccer to children and teenagers. The plan states that the school will expand to locations in [redacted] Although the plan provides the company's mission, values, and vision, the description of the school is generalized; the plan does not provide details concerning the operation of the business, such as start-up costs, financial forecasts, marketing strategies, or comparisons to other similar businesses.

In response to the RFE, the Petitioner submitted an updated business plan explaining that his academy will operate under a sports club franchise that exists in Brazil. The plan discusses his intention to include low-income children in the school's soccer programs, the issue of obesity in the U.S., and the fitness industry. A section of the plan entitled "The Marketing Strategy" cites five competitors: one youth soccer club, two soccer academies, and two adult fitness chains. While the plan describes the companies, it does not discuss how the Petitioner's company will compete with those companies, nor does it explain the relevance of the inclusion of adult fitness chains in the company's marketing strategy; it is not clear how businesses operating adult fitness facilities would compete with an academy focused on teaching soccer to children and teenagers. The business plan anticipates revenues of $4,066,104 and taxes totaling $1,478,280 after the company's fifth year of operation, as well as wage payments totaling $433,609. The revenue forecast data, however, does not appear to have any basis; although the Petitioner based the wage payments on data from the U.S. Bureau of Labor Statistics on earnings for certain occupations in Florida, the financial projections are speculative and are not supported by probative evidence showing how those projections were calculated. In addition, while the business plan anticipates an accumulation of 60 employees over its first five years of operation, it does not describe how those jobs will impact the economy beyond the immediate area in which the company will operate. The Petitioner has not demonstrated that the endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. The business plan does not clarify how the anticipated creation of 60 jobs by the company's fifth year would have substantial positive economic effects in Florida or any other area in the United States.

The updated business plan also provides additional information regarding the intention of the Petitioner's company to expand its locations to several states in three growth phases over fifteen years; however, it does not describe how the company anticipates this expansion's development apart from a stated intention to reinvest profits during the first five years of operation. The plan alludes to partnerships with gym clubs outside of the United States and cites letters from interested parties; these letters discuss the Petitioner's previous work with the company, but they do not describe an affiliation with the Petitioner's business that would suggest funding commitments or future business relationships. Absent a specific plan to generate investments, it is not evident that the Petitioner's company will generate revenue to create any jobs. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 at 376. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's pursuits in the real estate industry would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

In addition to using his company to operate a youth soccer training academy, it appears that the Petitioner's proposed endeavor includes his company's provision of business consultancy services;

the record includes documentation concerning the Petitioner's intended involvement as a consultant and franchisee for a company that plans to expand its fitness facilities. A financial analysis of this company bases projected job creation on the current existence of three fitness studios in Florida and the company's expectation to expand to 97 locations within five years. The record does not contain probative evidence to demonstrate that this rapid expansion of franchises will materialize; while a document composed by the company describes its workout equipment and software, it is not supported by documentation concerning its current operation or specific plans for expansion. The document only identifies three franchisees—including the Petitioner—to consult on its expansion in California and Florida. It is not clear from the record how the Petitioner intends to allot his time to developing his soccer academy while providing consultancy services to a franchise and, in general, to companies in need of his "skills in the management, administration, and expansion of business units in the fitness industry." 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 conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his academy's students or his franchises and their clientele to impact youth soccer, the health and fitness industry, or the U.S. economy more broadly at a level commensurate with national importance. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.