U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28425355

Date: SEPT. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner is a sales executive and entrepreneur who 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 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:

- 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

The Director determined that the Petitioner qualifies for the EB-2 classification as an advanced degree professional and the evidence in the record supports that conclusion. Therefore, the issue 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor 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 national importance, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar,* 26 I&N Dec at 889. In this case, the Petitioner states that his proposed endeavor is to launch and develop his own company, [redacted] which he will use as the vehicle for providing sales and consulting services to U.S. medical device manufacturers seeking to enter the Brazilian market and to Brazilian businesses looking to export their medical device products to the United States. The Petitioner stated that his endeavor "will culminate in significant international business transactions and cross-border negotiations that not only greatly enhance economic matters, but also respond to societal affairs, such as the national shortage of medical devices and personal protective equipment (PPE) brought to light by the COVID-19 pandemic."

The Director determined that the Petitioner met both elements of the first prong; the Director, however, did not elaborate on his analysis related to national importance, and the record does not appear to support a favorable determination on the national importance element of the first prong. The broader importance of addressing medical device and PPE shortages does not necessarily impart national importance to the Petitioner's specific endeavor as a sales consultant and entrepreneur in the medical supply industry. That said, however, we need not explore this issue further given that the stated grounds for denial support dismissal of the appeal without having to address the Director's favorable determination concerning national importance.

Accordingly, we turn to the second *Dhanasar* prong, which shifts the focus from the proposed endeavor to the individual. To determine whether an individual is well-positioned to advance the specific proposed endeavor, we consider factors including, but not limited to the following: 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. *Id.* at 890.

Although the record shows that the Petitioner has sufficient education, skills, and knowledge of the medical supply market in Brazil, it does not establish that he has a record of success in the U.S. medical devices industry, a significant part of his proposed endeavor. Nor does the record contain an adequate business plan for future activities or sufficient evidence demonstrating that the Petitioner made progress in advancing his endeavor or that he had potential customers or business partners who were interested in his endeavor when this petition was filed.

At the time of filing, the Petitioner stated that the focus of his endeavor would be to advise U.S. and foreign entities on selling and exporting medical devices; he claimed that he is "set to invest [] personal

funds to develop this endeavor" and stated that he would not seek out loans to fund the operation. The Petitioner highlighted his work experience, asserting that his 16 years of selling medical devices in Brazil has enabled him to forge critical business relationships. To that end, the Petitioner provided letters of recommendation from prior colleagues and business associates who broadly referenced the Petitioner's experience in Brazil's medical supply market and his relationships with suppliers in Brazil. However, the Petitioner does not explain how his relationships with suppliers in Brazil will assist him in his endeavor to provide consulting services to businesses in the United States. We note that the letters made no mention of the Petitioner's knowledge of or experience in the medical supply market in the United States, where the Petitioner plans to pursue his business endeavor.

The record also contains a business plan, complete with financial and personnel forecasts. The plan indicates that the Petitioner will invest $20,000 towards the launching of his company and projects that the company's first year payroll, operating, and marketing costs will be $385,708, $97,940, and $5,800, respectively, to be offset with an estimated revenue of $552,905. The Petitioner did not, however, elaborate on these projections or adequately explain how they were calculated. Further, because the business plan does not itemize or account for initial start-up costs which are typically incurred by a new business, it is not apparent that the Petitioner's investment of $20,000 would be sufficient to cover those costs and enable the company to commence revenue-generating activity.[2]

In denying the petition, the Director acknowledged the Petitioner's educational and professional credentials. The Director further noted that the recommendation letters the Petitioner submitted from his peers did not establish his success as a sales executive/entrepreneur and offered only brief descriptions of his contributions and activities. The Director also pointed to the lack of evidence showing: that the Petitioner was recognized for accomplishments or contributions in his field, that the proposed endeavor has generated interest among relevant parties in the field, or that forward progress has been made with respect to the proposed endeavor. In light of these findings, the Director concluded that the Petitioner did not submit sufficient evidence demonstrating that he is well-positioned to advance his endeavor.

On appeal, the Petitioner asserts that in denying the petition, the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." However, the Petitioner does not point to specific examples of this within the Director's request for evidence (RFE) or denial. Importantly, the Petitioner also does not offer a detailed analysis explaining the particular ways in which the Director "imposed novel substantive and evidentiary requirements" in denying the petition.

The Petitioner further alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard . . . to the detriment of the appellant." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B),

[2] Although the record shows that the Petitioner formed a limited liability company in [redacted] 2020 and was present in the United States at that time, there is no evidence that his company was operational in November 2020, when this petition was filed.

https://www.uscis.gov/policy-manual. While the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for the EB-2 classification and a national interest waiver, he does not further explain or identify a specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

In addition, the Petitioner broadly states that he is advancing his proposed endeavor "by coordinating and supervising his business activities to ensure they produce the desired results" and by "ensuring organizational compliance with regulations, laws, procedures, and policies." However, the Petitioner offers no details as to the specific steps he had taken to advance his endeavor as of the date this petition was filed. *See* 8 C.F.R. § 103.2(b) (requiring that eligibility be established at the time the petition is filed). Although the record contains a document entitled "Consultancy Agreement" showing that the Petitioner was contracted to provide consulting services to another business, that contract was executed in September 2022, nearly two years after the instant petition was filed and therefore does not establish that the Petitioner was well-positioned to advance his proposed endeavor at the time of filing. The Petitioner also highlights the previously submitted letters of recommendations from his peers and colleagues as a means of establishing a "track record of distinguished achievements and excellent customer service." However, as previously noted, the referenced letters focused entirely on the Petitioner's work in Brazil and did not indicate that the Petitioner's work involved dealing with medical supply companies in the United States, which is part of his stated endeavor, and where he seeks to pursue his endeavor.

In sum, the record does not reflect sufficient interest from potential customers, users, investors, or other relevant entities or individuals to demonstrate that the Petitioner is well-positioned to advance his proposed consultancy business. Nor does the evidence show that the Petitioner's track record of running a business in Brazil, plan for future activities, and progress towards establishing his company rise to the level of rendering him well-positioned to advance the proposed endeavor. For these reasons, the Petitioner has not established that he satisfies the second prong of the *Dhanasar* framework.

As explained above, 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. Here, however, the Petitioner has not established that he is well-positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework. As such, the Petitioner is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

ORDER: The appeal is dismissed.