U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28191836

Date: SEP. 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as 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).

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).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] 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,[3] 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.[4]

II. EB-2 CLASSIFICATION

The Director's conclusion that the Petitioner qualifies for the EB-2 classification as an individual of exceptional ability did not include an analysis of the documentation submitted under the relevant evidentiary categories, nor did the conclusion include a final merits determination of that evidence in its entirety. The Director incorrectly concluded that the evidence of the Petitioner's associate's degree and ten years of employment "satisfies the Dhanasar requirement for exceptional ability." The Director then addressed the Petitioner's eligibility for a national interest waiver.[5] 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]

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[1] 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).

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

[3] *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).

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

[5] We note that, while the record does not show that the Petitioner requested consideration for the EB-2 classification based on possession of an advanced degree, his resume lists an associate's degree, a bachelor's degree, and a master of business administration. The record, however, contains only an associate's degree dated February 2012 and a document showing courses taken in 2009 and 2010.

[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 describes his proposed endeavor as follows (quoted as written):

> My career plan in the United States is to continue working as an Entrepreneur, developing new enterprises for the North American market and generating more direct and indirect jobs through my endeavors. I intend to continue expanding, maintaining good working relationships with investors, and identifying any opportunities for cross-border investments. I have plans for future business expansion and I will continue to facilitate cross-border investments between the U.S. and Brazil. I have the experience and skills to navigate lucrative business projects and my unique expertise will surely provide guidance and success in the areas of cross-border transactions and investments with Brazil.
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> ...
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> My specific endeavor will potentially impact the U.S in the following ways:
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> - U.S. job creation and tax revenue;
> - Designing, implementing, and managing all activities in the business development and management, marketing, personnel management, strategic planning, and leadership areas of a business;
> - Serving in underserved and rural communities, with my expertise in the franchising markets, retail chains, food, and construction industries, to streamline their business and management, as well as promote the creation of jobs in these areas;
> - Aiding and proving consultancy in business areas, specializing in business development and management, marking, personnel management, strategic planning, and leadership;
> - Providing integral guidance and advisement to U.S. companies doing or planning to do business in Brazil seize new business and investment opportunities; and,
> - Network with industry peers, competitors, and prospective clients to continuously develop new business opportunities.

The Director requested additional evidence to clarify the Petitioner's specific proposed endeavor. In response, the Petitioner submitted, in part, a business plan that describes his intention to operate a consulting company. He states in a cover letter that his company "will operate as a construction, management, and real estate consulting services company based in Florida. The Company will provide services to Brazilian and U.S. investors, low-income families looking to rent a house, as well as individuals looking for a new home. The Company will offer high-quality and reliable services to its clients." Although the Director determined that the Petitioner's proposed endeavor has substantial merit, the Director concluded that the record did not establish that the 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 her 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 asserts through a brief from his attorney that USCIS "erroneously denied" the petition and "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." The Petitioner, however, does not identify any unusual requirements imposed, nor does the Petitioner specify how the Director erred or what factors in the decision were erroneous.[7] The Petitioner also contends, without further explanation, that the Director applied a stricter standard of proof than that of preponderance of the evidence[8] and "did not give due regard" to the evidence submitted. The brief also provides the following with regard to the proposed endeavor:

> With an expected total payment of wages of 1,053,789 million dollars by year five (5), [the company] is ready to boost local economies, specifically in underserved business zones, of several states across the United States.
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> The Appellant will establish his company in the state of Florida, an SBA HUBZone area that will help to fuel small business growth in historically underutilized business zones. [The company] will make a stand and impact, generating jobs for U.S. workers in these underutilized areas, improving the wages and the working conditions for the U.S. workers, and helping the local community bring investments to the region.

[7] An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).

[8] *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).

The goal of the Small Business Administration's HUBZone Program[9] is to fuel small business growth in economically depressed geographic areas, and we note that the Petitioner's business plan does not discuss HUBZones or specify where in Florida that Petitioner's business will be based. The business plan identifies one low-income area in Mississippi, stating that the company "will have a huge impact on a city that lacks investment, transforming…forgotten land ready for construction of houses and businesses. [The company] will contribute to revitalization of the region and attracting [*sic*] new investment and business into the area." The business plan also discusses regions in the United States where the construction industry is growing. The Petitioner, however, 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 21 jobs by the company's fifth year would have substantial positive economic effects in Florida, Mississippi, or any other area in the United States. While the business plan asserts that the company's "beneficial partnerships" and "well-developed network of contacts" will attract investments from Brazil and other foreign and domestic investors, this and other generalized statements concerning the company's potential are not supported by probative evidence in the record. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

In addition, the business plan anticipates revenues totaling $6,565,082 and taxes totaling $725,947 by the company's fifth year of operation. The business plan uses a multiplier published by the Economy Policy Institute (EPI) to show that it will generate 47 indirect jobs by the company's fifth year of operation. The financial and job forecast data, however, does not appear to have any basis; the business plan does not specify how the Petitioner will incentivize investments, and absent a specific plan to generate investments, it is not evident that the Petitioner's company will generate revenue to create any jobs. And while the business plan promises growth beyond the region in which the company will operate in Florida, it does not describe how the company anticipates this expansion's development. 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.

The record includes industry reports and articles discussing the importance of small businesses and immigrant entrepreneurship to the U.S. economy, the connection between management competence and organization performance, as well as the anticipated decline of skilled labor in the workforces of several countries. The record also includes information from the U.S. Bureau of Labor Statistics concerning chief executives, as well as an expert opinion letter from a professor at [redacted] University that discusses the Petitioner's experience and the impact of foreign trade on the U.S. economy. The content of this documentation, while it may relate to the industry in which the Petitioner intends to operate his business, does not speak to the national importance of the Petitioner's specific endeavor to manage a company developing real estate. 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 company and its clientele to impact the real estate industry or the U.S. economy more broadly at a level commensurate with national

[9] *See* https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program.

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); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015).

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.