U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29667110

Date: JAN. 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, the prospective general and operations manager of acai fruit bowl and smoothie franchises, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer in this category - and thus a related requirement for certification from the U.S. Department of Labor (DOL) - if a petitioner demonstrates that waiving the U.S.-worker protections would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director found the Petitioner qualified for the requested EB-2 category. But the Director concluded that he did not demonstrate the requested waiver's merits. On appeal, the Petitioner contends that the Director overlooked evidence that his proposed endeavor has "national importance" and that, on balance, a waiver would benefit the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with the Director that the Petitioner has not established the claimed national importance of his proposed endeavor. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the requested EB-2 immigrant visa category, either as members of the professions holding "advanced degrees" or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, petitioners must demonstrate that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889-91 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may merit waivers of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Brazilian native and citizen, earned a four-year bachelor's degree in his home country. For about the next 14 years, companies there employed him as a distributor manager and general director/franchisee.

The Petitioner came to the United States in 2022 and intends to operate six franchise stores in mall kiosks: four in Florida; and one each in Kentucky and Hawaii. The stores would offer acai bowls, acai smoothies, water bottles, and "peanut crumbs tablets." After filing the petition in July 2022, the Petitioner opened his first kiosk in Florida in May 2023. His business plan projects that, within five years of operations, his kiosks together would generate $4,097,000 in annual revenues and employ 27 people.

B. EB-2 Eligibility

Finding that the Petitioner has a bachelor's degree followed by at least five years of experience, the Director concluded that he qualifies for the EB-2 category as an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include "[a] United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty"). The Petitioner did not submit evidence that his foreign degree equates to a U.S. bachelor's degree. But the Electronic Database for Global Education (EDGE) - an online resource that U.S. federal courts have described as a reliable source of foreign educational equivalencies - identifies a four-year Brazilian *bacharel* degree like the Petitioner's as the equivalent of a U.S. bachelor's degree.[1] We therefore agree with the Director that the Petitioner qualifies for the EB-2 category as an advanced degree professional.

[1] EDGE was created by the American Association of Collegiate Registrars and Admission Officers (AACRAO), a non-profit association of more than 11,000 higher education professionals representing about 2,600 institutions in more than 40 countries. *See* AACRAO, "Who We Are," www.aacrao.org/who-we-are; *see also Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

C. Substantial Merit

We also affirm the Director's conclusion that the Petitioner's proposed endeavor has substantial merit. A venture may have substantial merit whether it "has the potential to create a significant economic impact" or it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889.

Evidence indicates that the Petitioner's proposal could generate revenues and create jobs for U.S. workers. We therefore agree that the endeavor has substantial merit.

D. National Importance

In determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

The Director found insufficient evidence that the Petitioner's proposed endeavor would affect the economy or business field beyond his company, employees, and customers. The Director stated: "The record does not sufficiently show that the benefits of his proposed endeavor, either individually or cumulatively, would rise to the level of national importance."

On appeal, the Petitioner contends that the Director overlooked evidence. He states that his "proposed endeavor impacts nationally important matters, and the national economy, explicitly by:

- Offering economic convenience and agility, as he is able to secure the success of small and medium sized U.S. companies, while also creating solutions that will profoundly impact human life;
- Promoting growth and expansion and drive change with innovation, which thus promotes and drives national economic advantage; and
- Stimulating the domestic job market, as enhanced business actions through his own business that leads to the generation of new jobs for American workers.

The Petitioner appears to indicate that, besides operating his own company, he would help other U.S. small- and medium-sized businesses. But his initial filing indicates only that he would manage his business. In a "definitive statement" accompanying the filing, he stated: "I intend to continue using my expertise and knowledge, gained through my 18 years of experience, to serve as a General Operational Manager by managing and operating my own company and contribute to the U.S. economy." Also, his business plan states: "The Endeavor proposed by [the Petitioner] relies on developing . . . an Acai Bowl Shops firm that provides Acai Bowls, Acai Smoothies, Water Bottle and Peanut Crumbs Tablet planned to be headquartered in Florida with five business units in Florida, Kentucky and Hawaii."

A petitioner must demonstrate their eligibility "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1); *see also Matter of Izummi*, 22 I&N Dec. 169, 175 (AAO 1998) ("[A] petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements.") Thus, to the extent the Petitioner asserts the national importance of his venture based on offering services to other U.S. businesses, the record at the time of the petition's filing does not support that assertion.

Also, the Petitioner has not specified the "solutions" and "innovations" that his proposed endeavor would purportedly offer to promote growth, expansion, change, and national economic advantage. Thus, the record does not demonstrate that his proposed endeavor would nationally impact the business field.

Further, the Petitioner has not explained how his business's number of employees would affect the national economy. As previously indicated, his business plan projects that, within five years of operations, his kiosks would employ 27 people. But he has not explained the national significance of that number. The Petitioner submitted evidence that he would locate his kiosks in "HUBZones," or underutilized business areas. *See* U.S. Small Bus. Admin., "HUBZone Program," www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program. But, even assuming the kiosks' operations in economically depressed areas, the Petitioner has not demonstrated that his projected number of employees would significantly affect the areas. The record indicates the proposed distribution of his 27 workers over six locations. Also, the Petitioner has not detailed each purported employee's position, wage rate, or number of work hours. Thus, the Petitioner has not established how his workers' employment in any one location would significantly benefit that geographic area.

In general, the Petitioner has not demonstrated that his venture would have the size or scope to impact the national economy. *Dhanasar* supports our position. There, we found substantial merit in a petitioner's proposal to teach U.S. university students courses in science, technology, engineering, and mathematics ("STEM") disciplines. *Dhanasar*, 26 I&N Dec. at 893. But we ruled that the petitioner did not establish the venture's national importance, as "the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." *Id.* Similarly, the Petitioner has not demonstrated that his meritorious proposal to operate acai kiosks would "more broadly" affect the U.S. economy or business field.

For the foregoing reasons, the Petitioner has not established that his proposed endeavor has national importance or his eligibility for a national interest waiver. As his petition lacks the requisite job offer and labor certification, we will affirm the petition's denial.

E. A Waiver's Benefits to the United States

Our conclusion that insufficient evidence supports the claimed national importance of the Petitioner's proposed endeavor resolves this appeal. Thus, we decline to reach and hereby reserve consideration of his appellate arguments regarding a waiver's purported benefits to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526

n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

III. CONCLUSION

The Petitioner has not demonstrated that his proposed endeavor has national importance. As he does not merit a national interest waiver, we will affirm the petition's denial for lack of a required job offer and labor certification.

ORDER: The appeal is dismissed.