U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31073500

Date: JUL. 05, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an early childhood education entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a discretionary 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 although he qualifies for the EB-2 classification as an advanced degree professional, the record did not show that a waiver of the required job offer, and thus labor certification, would be in the national interest. This matter is now before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner bears the burden of establishing his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

I. LAW

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant 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 establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in holding that USCIS' decision on a national interest waiver is discretionary in nature).

II. ANALYSIS

The Director concluded that the Petitioner qualifies for the EB-2 classification as a member of the professions holding an advanced degree. The record includes a master's degree from Colombia, the underlying academic record, and a diploma evaluation, indicating that the Petitioner may have a foreign equivalent of a U.S. master's degree. 8 C.F.R. § 204.5(k)(2), (k)(3)(i)(A).[2] The remaining dispositive issue on appeal is whether he warrants a discretionary national interest waiver under the *Dhanasar* framework, the first prong of which, substantial merit and national importance, focuses on the specific endeavor that he proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In assessing whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The Director determined that although the Petitioner's proposed endeavor has substantial merit, the evidence did not establish that it is of national importance as required under the first prong of the *Dhanasar* framework. Upon de novo review, we conclude that the Petitioner has not demonstrated he warrants a national interest waiver in part because the record does not show his proposed endeavor is of national importance and therefore does not satisfy *Dhanasar*'s first prong.

The Petitioner has business administration and marketing degrees, related certificates, and a master's degree with an emphasis in educational management. He has worked as a collections analyst and as an administrative and financial director for a school called [redacted] in Colombia. According to the Petitioner's personal statement and his initial business plan, he plans to open a daycare center in [redacted] Florida, called [redacted] ("the Company"), and proposes that as the founder, CEO, and general manager, he will contribute to early childhood education in the United States by providing legally compliant bilingual daycare educational services to babies and young children in the areas of science, technology, engineering, the arts, and mathematics ("STEAM"), and further contribute to the U.S. economy through expansion of his daycare business to four other locations by the fifth year of its operation.

As an initial matter, the Director found that the Petitioner's new business plan and assertions submitted in response to a request for evidence (RFE) as to his business expansion and his role as general manager constituted an impermissible material change to his proposed endeavor previously based on his initial business plan provided at the time of filing. We agree with the Director's determination.

If the Petitioner's RFE response proposes an activity in an entirely different field or occupation, that may be considered as a material change to the petition and disregarded on appeal. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998) (holding that a petitioner may not make material changes to a petition to make otherwise a deficient petition conform to USCIS requirements). In his personal statement and business plan he submitted at the time he filed his petition, the Petitioner indicated that as the founder and general manager of his daycare center, "[h]e will direct, oversee, and manage all education programs, ensuring their quality, as well as compliance with industry standards and regulations" in providing young children bilingual STEAM education programs to better prepare them for future academic and professional success. In further describing this managerial endeavor, the initial business plan explicitly limited the age group to "infants and one-year old children, toddlers,

[2] However, given our resolution of this appeal based on the following analysis below, we need not reach this issue.

three-and four-year-olds, and school aged children." However, the new business plan he submitted in response to the RFE—without any justification or explanation—broadens the age group from infants to "all school-age students who are legally required to attend school" ranging from four-five-year-olds to even teenagers, including high school students who are 17 and 18 years old. Moreover, as the Director determined, the new business plan inexplicably, and without any independent evidence, exponentially increases the proposed number of prospective employees and revenue projections, compared to the initial business plan. Specifically, the initial business plan indicates that by year five of the Petitioner's business operation, he will have a total of nine employees, comprising four teachers, four teaching assistants, and an administrative assistant, each earning roughly $30,400, $28,000, and $44,600, respectively; and the Company will bring in $1.43 million in total revenue with resulting net profit of about $136,000. However, the new business plan now conjectures that by the fifth year of his daycare business, he will have 377 employees working under him (42 times the initial staffing projection) comprising 186 teachers, 186 teaching assistants, and five administrative assistants, each respectively earning by the fifth year estimated increased salaries of roughly $80,500, $58,500, and $65,800. The new business plan also projects that by year five, the Company will now bring in roughly $55.3 million (39 times the initial total sales revenue projection) with net profit of about $17 million, 11 times greater than what was previously stated in the initial business plan he submitted at filing.

The expansion of the future clients' age group and the unsubstantiated extremely high increases in staffing and revenue projections, as reflected in the new business plan, fundamentally alter the nature and scope of the Petitioner's initial proposed endeavor. The new business plan also proposes that [redacted] will now "operate as a private educational institution" or a "school," rather than a "childhood daycare" or "private nursery and preschool services" outside of school hours as he explicitly described in his personal statement and initial business plan. Further, the Petitioner on appeal now adds that he will also provide education and training to his teaching staff in the STEAM methodology, another aspect of his role inherently different from the initially proposed executive and managerial functions. We are unpersuaded by the Petitioner's general appeal assertion that his new business plan is simply "a more ambitious expansion plan" clarifying his business potential and it does not materially change his proposed endeavor based on the initial business plan. Other than conclusively alleging that the Director improperly relied on *Matter of Izummi*, the Petitioner does not cite any relevant legal authority for the proposition that adding on a new (training) endeavor and client base to his proposed work as well as drastically different business projections and outlook do not materially alter his initial proposed endeavor. Therefore, the Petitioner's expanding parameters and terms beyond his initially proposed endeavor impedes our ability to meaningfully evaluate whether it is of national importance under the *Dhanasar* framework, which is an independent dispositive basis for dismissing this appeal.

Even if the proposed endeavor described in the RFE response merely clarifies the proposed endeavor in the Petitioner's initial statement and business plan, the totality of the evidence, including the new business plan, does not show that it has national importance. In assessing whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. To show national importance, we look for evidence of a proposed endeavor's broader implications in the field, and "[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.

As the Director concluded, although the Petitioner's proposed endeavor has substantial merit, he did not establish that his proposed endeavor is of national importance in part because he did not show that his daycare services business would have significant potential to employ U.S. workers, broadly impact the industry beyond his business, or otherwise have broader economic or other implications rising to the level of national importance. The Petitioner does not submit any new evidence on appeal but alleges that the Director improperly applied a stricter evidentiary standard than the preponderance of evidence standard and ignored overwhelmingly probative evidence.

Under the applicable preponderance of the evidence standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, other than generally asserting that the Director applied a stricter evidentiary standard and describing the applicable evidentiary standard, the Petitioner does not specify how Director erred and mistakenly refers to an unrelated application for temporary resident status under section 245A of the Act. Our independent review of the record further shows that the Director properly analyzed and weighed the Petitioner's documentation by a preponderance of the evidence under the *Dhanasar* framework.

In reasserting that his proposed endeavor has national importance, the Petitioner primarily relies on his academic credentials and professional experience and the same market information included in the industry reports he submitted below pertaining to the claimed importance of early childhood STEAM education. He further reasserts that, given his background and skills, which he claims ideally position him for the market and its high demands, his work in the STEAM-focused daycare services industry will have substantial positive educational, economic, and societal impact. However, the Petitioner's reliance on his credentials and experience relate to the second prong of the *Dhanasar*, which shifts the focus from the proposed endeavor to the foreign national. *Id*. at 890. While we acknowledge the evidence reflecting the importance of early childhood STEAM education, under *Dhanasar's* first prong, we assess whether the specific endeavor he proposes to undertake has broader implications in the field, rather than the general significance of work of the entire industry in which he proposes to engage. Here, as a founder, CEO, and general manager of his STEAM daycare business, the Petitioner proposes to lead and expand his Company by utilizing his business acumen and skills in implementing novel and innovative STEAM programs and pedagogical methodology. However, the record does not contain any evidence that his claimed innovative educational methods were ever or would be adopted by the industry, made any impact in the field, or otherwise have far-reaching implications. Further, the industry reports and articles he submitted, which were largely incorporated into his business plans, mainly emphasize the value of the STEAM education at large, rather than its importance in relation to the Petitioner's proposed endeavor specifically in the daycare services industry. Although we acknowledge his proposed endeavor could have a positive impact on his business, he has not persuasively explained, and the record, including an expert letter and numerous other support letters from colleagues, does not show how his work would have the broader implications for the industry, U.S. education system, and the country's economy, as he claims, beyond his business and customers.

In *Dhanasar*, we specifically noted that endeavors with "significant potential to employ U.S. workers" or those having "substantial positive economic effects, particularly in an economically depressed area" *may* have national importance. *Id.* at 890. The Petitioner's original business plan includes an organizational chart and a five-year plan listing him as "General Manager" initially overseeing three employees comprising one teacher, a teaching assistance, and one administrative assistant; and by year

five, four teachers, four teaching assistants, and one administrative assistant. We also acknowledge the new business plan now projects that by the fifth year of his daycare center operation, he will have 186 teachers, 186 teaching assistants, and five administrative assistants.

The Petitioner maintains that his business will directly generate significant economic benefits as well as indirect economic and educational benefits related to his business expansion producing more jobs and better educated children. The two business plans both include financial conjectures projecting, by year five, total sales revenue of either $1.43 million versus $55.3 million, respectively, and net profit of $136,000 versus $17 million. These conflicting figures, which diminish the claimed evidentiary value of each business plan, are speculative as the record also lacks corroborating evidence that would objectively substantiate the widely varying projections, such as independent basis for the Company's claimed net worth, payroll and tax expenses, and the source of the projected revenues. Further, while the business plans also include personal plans and organizational charts and general descriptions of the duties of these positions, the record does not include any evidence-based justifications for the staffing projections and the claimed urgency and need to employ increasing numbers of employees and expand his operation to four other locations. The record also does not include any description or related evidence as to the hiring criteria or process, and whether any of his proposed business locations would serve an economically underprivileged area. The business plans by themselves thus do not show a significant potential to employ U.S. workers or substantial positive economic effects that may indicate national importance. The Petitioner's reliance on his business plans, aspirational assertions, support letters, and general industry reports, do not validate the projections or show how he will specifically achieve them. Although he continues to highlight that his work also will have major *indirect* economic impact, creating even more jobs and residual economic activities, the record does not support that the claimed indirect impact would be directly attributable to his proposed endeavor.

The Petitioner further claims, in his initial business plan, that he and another individual have already "personally invested" a total of $500,000 into his Company. However, the record does not contain any evidence independently corroborating this assertion. Similarly, the assertions in his new business plan that several other individuals have also already "invested" money into his business is not substantiated by any objective, probative evidence, as the record only contains general intent letters (not binding contracts) indicating their plans to potentially provide future funding and partial and minimal documentation as to their claimed willingness and ability to invest. The Petitioner's claim that he once hired a real estate agent to look for commercial property for his business too is uncorroborated by independent evidence. Although the record includes a mortgage request and related email correspondence, they pertain to his search for his own home rather than a business facility. The record does not otherwise indicate anyone has ever invested any money into his proposed business and he has in fact looked for or purchased business property. We further note that the publicly available informational website for the Petitioner's proposed daycare business (www.[redacted] does not list any physical address or a valid phone number.

While the Petitioner continues to express his desire to contribute to the U.S. education system and its economy, he has not established with specific, probative evidence that his proposed endeavor will have broader implications in his field, have significant potential to employ U.S. workers, or have other substantial positive economic effects. The Petitioner therefore has not demonstrated that his proposed endeavor has broader national implications as contemplated by the *Dhanasar* framework.

As the identified grounds for denial, the materially conflicting descriptions of the Petitioner's proposed endeavor and his inability to meet *Dhanasar*'s first prong, are dispositive of this appeal, we decline to reach the remaining appeal arguments as to the second and third prongs of the *Dhanasar* framework. *See, e.g.*, *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to reach issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.