U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31222528

Date: JUL. 15, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a finance specialist, 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 Nebraska Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal pursuant to 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 the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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.

Id.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined 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 that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

According to the Petitioner's statement provided with the initial filing, he intends to continue working as a finance specialist. The Petitioner indicates that he specializes in investment funding for U.S.-based companies and real estate projects; his "work focuses on structuring and sourcing equity capital to acquire and invest in American companies"; and once he identifies "an investment opportunity within [his] list of target industries in the U.S." his work includes "deeply analyzing each opportunity, sourcing for investors, structuring the investment, and advising the company on its operations." The Petitioner intends "to continue on this path by offering [his] consulting services through [his] company, [redacted] based in New York. In support of his eligibility, the Petitioner also submitted a business plan, copies of industry articles and reports, and letters of intent expressing interest in working with the Petitioner.

The Director determined, in part, that the Petitioner's initial filing did not demonstrate the proposed endeavor's national importance and issued a request for evidence. In response, the Petitioner asserted that the previously submitted documentation established his eligibility for a national interest waiver. He contended that his proposed endeavor of providing financial services has national importance because "it will have national implications within a particular field" and he has a "proven track record of substantial positive economic effects." The Petitioner indicated that he has demonstrated the proposed endeavor's impact through the work he has already completed in the United States; he will help companies raise profitability, maintain workers, and "broadly enhance societal welfare on a national scale" through his work in the private equity sector; and his company will generate significant revenue with an estimated $12,100,000 in sales by the fifth year.

In denying the petition, the Director concluded that though his proposed endeavor as a finance specialist had substantial merit, the record contained insufficient evidence to demonstrate that the prospective impact of his endeavor rises to the level of national importance. The Director noted that while the submitted evidence emphasized the importance of finance specialists and the role they play

for organizations, it appeared that the benefit of the Petitioner's endeavor would primarily accrue to his prospective employer and the record did not establish that the Petitioner's work has significant potential to impact the field or the nation more broadly at a level consistent with national importance. The Petitioner did not show that any increased performance or efficiency realized by his prospective employer would result in significant job growth or substantial positive economic effects for the nation. Therefore, the Petitioner did not meet prong one of *Dhanasar*.

On appeal, the Petitioner claims that the Director did not properly analyze the evidence. He asserts, in part, that the record demonstrates his proposed endeavor meets the national importance element of the first prong of *Dhanasar* because his company will support the growth and survival of U.S. businesses, stimulate foreign investment in the United States, and have substantial positive economic effects. The Petitioner contends that his company will have a national impact beyond the number of individuals he employs "due to the substantial size and monetary value of the transactions he oversees." He refers to the letters of intent from four companies in the financial sector that express "their desire in collaborating with him shortly" and argues that the letters "illustrate the interest and potential benefit his services can bring to the financial industry."

Upon review, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate whether he had demonstrated, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework. In determining national importance, the relevant question is not the importance of the field, 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. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and 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. Although the Petitioner discusses the value and importance of financial services and its impact on the U.S. economy, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession in which the individual will work. *Id.* at 889.

Further, the Petitioner did not demonstrate that his company's operations would provide substantial economic benefits to the region or nation at a level commensurate with national importance, nor did he demonstrate that his company's activities would substantially impact job creation and economic growth, either regionally or nationally. For example, the Petitioner's business plan projects that his company will have 14 full-time employees by the fifth year of operation. We also note the record contains four letters of intent from companies indicating interest in working with the Petitioner in the future. However, the letters do not reflect contractual work or investment commitments with the Petitioner's company. Moreover, the letters are not sufficient to show significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make 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 alternate issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.