U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30186429

Date: MAR. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree. *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. *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner 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. 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established

eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner described the endeavor as a plan to found a consulting and production company "for filmmaking, cameramen, and videomaking, specializing in live broadcasting, that will be located in the heart of Orlando, Florida." The Petitioner submitted a business plan, which describes the company's target customers and clients as television stations, social media companies and content creators, advertising agencies, event-planning companies, tourist and hospitality companies, restaurants, and real estate business. The business plan describes the services the company would provide as operating cameras and producing live broadcasts, recording customers or clients' "corporate/institutional/training/advertisement and art videos," and recording its own tutorial videos "to show the operation of products or services in more detail[,] explain to the consumer the most advanced features of the products or services, and add a clearer message to the audience." The business plan also indicates that the company would employ four workers in the first year of operation, increasing to a total of seven workers by the fifth year of operation, including the Petitioner, respectively. Although the business plan does not clarify the number of workers in the particular job categories the company would hire or when the company would hire them, the plan indicates that the company's workers would include camera operators, audio and video technicians, film and video editors, and receptionists.

The Director acknowledged that "the [P]etitioner's proposed endeavor to open a consultancy, advisory, and training office in filmmaking, cameramen, and videomaking is of substantial merit." However, the Director observed that the record does not establish whether "the potential prospective impact of the [P]etitioner's specific proposed endeavor would have any implications beyond any clients, employees, individuals, or entities with whom he would work, to impact the field, industry, or the economy more broadly at a level commensurate with national importance." The Director also observed that the record does not establish how the proposed endeavor may "offer the region (Florida) or its population a substantial positive economic benefit as contemplated by *Dhanasar* (such as through employment levels, business activity, investment, or related tax revenue)." The Director

concluded that the record does not establish the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. *See id.* The Director further concluded the record does not satisfy the second and third *Dhanasar* prongs. *See id.*

On appeal, the Petitioner asserts that the Director imposed novel requirements. The Petitioner also asserts that a letter ostensibly from an assistant professor at the University of [redacted] School of the Arts, dated September 2022, "fulfill[s] the criteria for demonstrating national interest." The Petitioner further asserts that he is "a STEM professional" and, thus, that "[h]is proposed endeavor indisputably impacts a matter that a government entity has described as having national importance or is the subject of national importance."

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that, although some of the Director's statements paraphrase language from *Dhanasar*, the Director's specific conclusions mirror *Dhanasar*'s plain language. In particular, the Petitioner first objects that the Director's language, "employment of a significant population of workers in the area," misapplies *Dhanasar*'s language, "significant potential to employ U.S. workers." *Id.* at 890. The Petitioner specifically notes that the "Director shifted the position of the adjective *significant* for it to operate as if a large number of workers must be employed to establish national importance; however, as per *Dhanasar* that is not the case, as *significant* serves to the possibility of hiring US workers with no reference to quantity." However, the same sentence in the Director's decision that contains the first phrase to which the Petitioner objects also contains the exact phrase from *Dhanasar* as follows:

> Thus, USCIS cannot conclude that the [P]etitioner's specific proposed endeavor has national or even global implications; *has significant potential to employ U.S. workers*; will broadly enhance societal welfare or cultural or artistic enrichment; or the area where he will pursue the specific proposed endeavor is economically depressed, that the specific proposed endeavor would somehow lead to the employment of a significant population of workers in the area, or that it would somehow offer a region or its population a substantial positive economic benefit as contemplated by *Dhanasar*. *Id.* at 890.

(emphasis added). Because the Director clarified that the record does not establish the proposed endeavor has significant potential to employ U.S. workers, as contemplated by *Dhanasar*—not only in the decision but in the same sentence as the language to which the Petitioner objects—the Director's observations regarding the endeavor's potential to employ a significant number of workers is essentially dicta, to the extent that it does not merely paraphrase language from *Dhanasar*.

The Petitioner next objects that the Director's language, "or that it would somehow offer the region (Florida) or its population a substantial positive economic benefit," misapplies *Dhanasar*'s language, "or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* The Petitioner specifically notes that the "Director changed the legal recommendation for the proposed endeavor having substantial positive economic *effects* for it to offer *the population* substantial economic *benefit*." The Petitioner then summarizes definitions of "effect" and "benefit," including that a definition of "benefit" is, essentially, something that produces a positive effect. Nevertheless, the Petitioner asserts that, by paraphrasing *Dhanasar*'s language with a synonym, "the Director is stating that such endeavor must have already produced economic advantages to the population and the region which supersedes the legal recommendation."

Regardless of whether there is a meaningful distinction between the synonyms of positive effects and benefits, the Director specifically did not require the endeavor to "have already produced economic advantages," as the Petitioner asserts on appeal. On the contrary, the Director specifically addressed whether the proposed endeavor "*would* somehow *offer* the region (Florida) or its population a substantial positive economic benefit" (emphasis added). The Director's specific contemplation of what the record establishes the endeavor "would . . . offer" prospectively does not require, as the Petitioner asserts on appeal, the endeavor to "have already produced economic advantages." In summation, we do not find that the Director imposed novel requirements when analyzing whether the record establishes the proposed endeavor may have national importance.

Next, as noted above, the record contains a letter ostensibly from an assistant professor at the University of [redacted] School of the Arts, dated September 2022. However, the signature on the final page is unusually small for the space provided, it is fuzzy and pixelated, and it appears in varying shades of gray, unlike the sharp, uniformly black text throughout the body of the letter. These characteristics indicate that it is a low-resolution image of a signature that could have been attached to the document in a word processor by any individual, rather than indicating that the assistant professor signed the document himself. *See generally* 8 C.F.R. § 103.2(a)(2) (describing acceptable signatures on paper documents, in relevant part, as "handwritten").

The conspicuous, apparent image of a signature casts doubt on whether the purported signatory actually wrote the letter and, thus, that it reflects his opinions. This doubt undermines the reliability and sufficiency of the letter, and of the remainder of the documents in the record. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (providing that doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition). Because the letter's reliability and sufficiency are undermined, it bears minimal probative value, and we need not address it further.

Next, contrary to the Petitioner's assertions on appeal, whether a petitioner qualifies as a member of the professions with an advanced degree in science, technology, engineering, or mathematics (STEM) does not affect the analysis of whether a proposed endeavor may have national importance. In all national interest waiver cases, the record must establish that a proposed endeavor—STEM-based or otherwise—has both substantial merit and national importance. *See generally* 6 *USCIS Policy Manual* 5(D)(2), https://www.uscis.gov/policy-manual. To assess national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we

focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner's proposed endeavor of founding a motion picture consulting and production company appears to benefit the Petitioner, as the company's owner, and the individuals and entities who may use the company's services as customers and clients. However, the record does not establish how the endeavor may have broader implications within the field of television production, filmmaking, live video broadcasting, or any other field, with the type of "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances," contemplated by *Dhanasar*. *See id.* at 889-90. The record does not establish how the Petitioner's plan to employ a total of seven workers, including himself, in the job positions noted above, in the [redacted] Florida, area, demonstrates the proposed endeavor may have a "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.