U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31208652

Date: JUNE 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 EB-2 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 the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that 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.

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. 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." 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).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

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 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.

With respect to his proposed endeavor, the Petitioner indicated in his initial business plan (dated November 2022) that he intends "to act as a legal analyst for North American and Brazilian trade companies, with the Petitioner assisting in analysis of each organization's legal documents and ensuring compliance with all applicable laws and regulations; conducting legal research, gathering evidence, and making recommendations concerning various legal matters; and preparing and conducting strategic planning to ensure strong results achieved in the legal business field." The Petitioner stated that he planned to "direct the operations of [redacted] a U.S.-based provider of tax consulting and advisory services aimed at helping both Brazil- and U.S.-based enterprises in an affordable manner. [The Petitioner] will serve as the Legal Tax Consultant of the Company."

The Petitioner's initial business plan includes industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's initial business plan anticipates that his company will employ 4 personnel in year one, 8 in year two, 10 in year three, 13 in in year four, and 16 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while his plan offers revenue projections of $381,000 in year one, $576,000 in year two, $718,500 in year three, $912,000 in year four, and $1,077,000 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.[2]

The record includes information about the business consulting industry and its susceptibility to disruption, the U.S. management consulting industry, management consulting trends, the consulting service market, the U.S. legal services industry, foreign investment and non-immigrant admission

[2] In response to the Director's request for evidence, the Petitioner provided company formation documents for [redacted] dated June 2023 and a second business plan dated July 2023. The second business plan offers different financial and staffing projections. As the Petitioner's second business plan materialized after the filing of the petition, and therefore would not establish his eligibility at the time of filing, it does not assist him in establishing that he meets the requirements set forth in the *Dhanasar* framework. The petition in this matter was filed on November 30, 2022, and the Petitioner has the burden of proof to establish eligibility for the requested benefit at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts"). Further, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

trends, Latin America market entry blunders, law firm transactional demand and lawyer pay, and law firm competition for talent. In addition, the Petitioner provided articles discussing legal consultant responsibilities, U.S. relations with Brazil, the complexity of Brazil's tax legislation, the risks of doing business in Latin America, the benefits of foreign direct investment (FDI), the value of FDI to the U.S. economy, hiring and salary trends for the legal field, and the role that international companies play in strengthening America's economy. He also submitted information about the U.S. law firm industry, attorney shortages and their challenge to affordable representation, prospects for a long-term lawyer labor shortage, entrepreneurship trends and forecasts, immigrant women entrepreneurs, immigrants as job creators, the ways immigration benefits American workers, in demand and emerging legal practice areas, and entrepreneur statistics.

We agree with the Director that the submitted documentation establishes the Petitioner's endeavor has substantial merit. In determining national importance, however, the relevant question is not the overall importance of the industry in which the individual will work or the value of immigrant entrepreneurship; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor.

The Petitioner offered letters of support from F-A-R-, F-G-J-, F-J-L-A-, D-P-, M-J-, R-M-S-, I-A-T-, and F-R-B- discussing his business capabilities and tax law experience. The Petitioner's skills, knowledge, and prior work in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not demonstrated his "undertaking has broader implications for his field, as opposed to being limited to those who receive his services." The Director also concluded the Petitioner had not shown that "the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation."

In his appeal brief, the Petitioner argues that the Director erroneously imposed a stricter standard of proof. With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner does not specifically identify statements in the Director's decision applying a higher standard of proof or imposing novel substantive and evidentiary requirements beyond those set forth in the *Dhanasar* framework.

The Petitioner further contends that his proposed work is of national importance because his generic occupation of legal tax consultant stands to affect "both the national economy and the broader societal framework." Again, the issue here is not the national importance of the field, industry, or profession

in which the individual will work; rather we focus on the "the specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889.

In addition, the Petitioner asserts that he "will be addressing an industry shortage, which cannot be addressed by the U.S. workers as demand exceeds supply." We are not persuaded by the argument that the Petitioner's proposed endeavor has national importance due to the shortage of workers in his field. Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner also points to his Brazilian law degree and "twenty-two (22) years of experience and specialized knowledge" in business, including tax law, corporate law, and tax consulting. The first prong of the *Dhanasar* framework, however, focuses on the proposed endeavor and not on the Petitioner's prior work in the field, legal skills, or academic qualifications. The national importance of the Petitioner's proposed endeavor stands separate and apart from his education, skills, and job experience.[3]

Furthermore, the Petitioner claims that his company will be established in a Small Business Administration HUBZone area, which "is linked to a National Initiative and, therefore, of National Importance." While the Petitioner's appeal brief identifies [redacted] Utah, the record does not contain any evidence establishing his company's physical location in that area. Therefore, the Petitioner has not offered sufficient evidence that his business will in fact be in a HUBZone, and his business plan indicates that he does not qualify[4] and does not intend to be eligible for the HUBZone program. More importantly, the Petitioner has not demonstrated that increased employment attributable to his company's operation in a designated underutilized business zone would have positive economic effects commensurate with national importance. *Id.* at 890. So, the fact that the Petitioner's proposed endeavor may be in a HUBZone does not establish that his endeavor is of national importance.

The Petitioner also contends that the "ripple effects" of his entrepreneurial endeavor extend to the broader economy. He asserts that his undertaking contributes "to economic growth, fiscal stability, and the democratization of expert tax advice." The Petitioner further argues that his "company will have a great impact on the U.S. economy" through generating jobs, revenue, and income tax contributions. In addition, he claims that his proposed endeavor stands to affect the national economy by "offering economic convenience and agility" to "small and medium-sized U.S. companies," "promoting growth and expansion and driving change with innovation," "stimulating the domestic job market," and generating "new jobs for American workers."

The Petitioner, however, has not provided evidence demonstrating that his proposed legal consulting and business activities would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has

[3] *See Dhanasar* at 890.

[4] There are several required qualifications to participate in the program, including that the business seeking to participate in the HUBZone program must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe.

the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of his proposed endeavor stands to offer broader implications in his field or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States.

Additionally, the Petitioner cites to information from public policy organizations, news media, and U.S. federal agencies to show the overall value of immigrant entrepreneurship, but he has not demonstrated how operating a sales training and support services company as contemplated by his specific proposed endeavor rises to a level of national importance. In *Dhanasar*, we 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. While the Petitioner's statements reflect his intention to provide legal and tax consulting services to his company's future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. 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 Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field, the consulting or legal services industries, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida, Utah, or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. In addition, although the Petitioner asserts that his endeavor stands to generate jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers Florida, Utah, or the United States a substantial economic benefit through employment levels or business activity.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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 he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.