U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23064288

Date: APR. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a financial advisor, 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). 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.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner's proposed endeavor to work as an investment broker at his own wealth management firm was of national importance, nor did the record establish that it would be beneficial to the United States to waive the requirements of a labor certification for the Petitioner. The Petitioner subsequently filed a combined motion to reopen and a motion to reconsider, which was dismissed by the Director. The Director concluded that the requirements for a motion to reopen were not met because the Petitioner did not provide new facts related to the reasons for denial. The Director also concluded that the requirements for a motion to reconsider were not met because, while the Petitioner asserted that USCIS erred in denying his petition, he did not submit probative evidence to show that the decision was based on an incorrect application of law or USCIS policy. 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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Profession is defined as of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(3).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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 USCIS may, as matter of discretion,[4] grant a national interest waiver if the petitioner demonstrates that:

- 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. ADVANCED DEGREE

Neither the Director's request for evidence (RFE), the Director's initial decision, nor the Director's subsequent motion dismissal remarks on whether the Petitioner qualifies for the EB-2 classification as a professional possessing an advanced degree. As further detailed below, the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of *Dhanasar*, and, therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. We will therefore reserve the issue of the Petitioner's eligibility for the underlying EB-2 classification.[5]

III. NATIONAL INTEREST WAIVER

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

[2] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[3] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[4] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[5] *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").

as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner is currently a financial advisor whose proposed endeavor is to open a wealth management brokerage firm in [redacted] Florida. The Petitioner's proposal explained that his "project will help stimulate the U.S. financial market and local economy given that [he] will start his project with his existing loyal client base in Eastern Europe, numbering in the thousands, and worth millions of dollars that will be brought to the United States.... [He] is prepared to market his services to at least 200 clients who will commit at least $20 million USD incoming assets under management to U.S. bank accounts." The Director determined that the record did not contain sufficient evidence to establish that the United States needs assistance attracting foreign direct investors or that the Petitioner's proposal would solve a problem of such national scale. The Director pointed out that evidence submitted by the Petitioner ran contrary to the Petitioner's assertion; published material about the municipal bonds market from a U.S. Congressional Research Report on foreign direct investments found that the United States "occupies a unique position in the global economy as the largest investor and the largest recipient of foreign direct investments."

Regarding the scope of the Petitioner's proposal, the Director concluded that the record did not establish that the brokerage firm would have broad benefits beyond its clients, and that opinion letters endorsing the Petitioner's qualifications did not establish the national importance of his endeavor. The Director acknowledged that, under *Dhanasar*, an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may be understood to have national importance; however, the Director determined that the evidence of record did not establish that [redacted], Florida, is an economically depressed area, and that the Petitioner's projected creation of eighty-five jobs did not constitute a positive economic impact on either [redacted], Florida, or the United States as a whole. Finally, because the Petitioner's response to the RFE included a reference to a worldwide health crisis that did not exist when the petition was filed, the Director determined that the Petitioner did not have a concrete plan for the proposed endeavor as of the priority date.[6] While the Director's decision did not speak specifically to the merit of the Petitioner's proposed endeavor, the Director concluded that the Petitioner did not establish that his proposed endeavor is of national importance.

The Petitioner filed a combined motion to reopen and motion to reconsider,[7] which was adjudicated at the Texas Service Center.[8] In support of his motion to reopen,[9] the Petitioner submitted an article from Chronicalonline.com citing income statistics for [redacted] Florida. The Director determined that the information in the article did not demonstrate the prospective national importance of the proposed endeavor and, therefore, the Petitioner failed to submit probative new evidence to warrant reopening the petition. In support of his motion to reconsider, the Petitioner asserted that USCIS erred in denying his petition. The Director determined that the Petitioner's assertion was not

[6] *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (holding that a petitioner must establish eligibility at the time of filing; an immigrant petition cannot be approved after a petitioner becomes eligible under a new set of facts).

[7] [redacted]

[8] On appeal, the Petitioner mistakenly references the Administrative Appeals Office as dismissing his motion.

[9] *See* 8 C.F.R. § 103.5(a)(2), stating that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

supported by documentary evidence showing that the denial of his petition was based on an incorrect application of law or USCIS policy.[10] The Director concluded that the combined motion to reopen and reconsider did not meet applicable requirements and dismissed the motion.[11]

On appeal, the Petitioner again asserts that his petition was denied in error and that his motion was dismissed in error. He states that the evidence of record is sufficient to establish that he is a member of the professions holding an advanced degree and that he is eligible for a national interest waiver. He reiterates that his brokerage firm "will employ U.S workers as well as contribute to and uplift welfare of the economically-depressed region of [redacted] Florida, by providing world-class financial services to local clients of mostly poorer socio-economic statuses." He emphasizes that the firm's "programs will focus on assets for investment into municipal bonds and securities in [redacted] Florida, and other economically depressed regions of Florida that help fund specific municipal projects such as schools, highways, sewage systems, and day to day municipal obligations." The Petitioner's proposed endeavor to promote economic growth in an economically depressed area has substantial merit. The record, however, does not establish that the Petitioner's role as a financial broker will have a broad impact 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 foreign national proposes to undertake." *See 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 has other substantial positive economic effects, particularly in an economically depressed area." *Id*. at 889-90.

The Petitioner has not provided sufficient documentation to demonstrate that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States. *Id*. 890. He has not provided data or studies establishing that the location of his proposed endeavor is an economically depressed area and how specific investments would impact the region. He has not provided evidence of similar successful business models or other comparable examples to demonstrate the potential broader implications of his proposal. The Petitioner states that he "will disseminate his unique skills amongst his work-team, and teach his colleagues." 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. Similarly, the record here does not establish that the Petitioner's role as an investment broker would impact the industry more broadly, as opposed to being limited to the employees at his firm. We conclude that the Petitioner has not established the national importance of his proposed endeavor.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified basis for dismissal is dispositive of the

[10] *See* 8 C.F.R. § 103.5(a)(3), stating that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy.
[11] *See* 8 C.F.R. § 103.5(a)(4).

Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *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

The Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers, to impact an economically depressed region, or to otherwise offer substantial positive economic effects for the United States. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.