U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28086564

Date: AUG. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physician, 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.

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 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.

Initially, the Petitioner provided conflicting descriptions of the proposed endeavor. He referred to it as a plan to "finish my diploma validation and start an entrepreneurial medical career . . . opening a clinic." In contrast, he also described the proposed endeavor as a plan to "act[] on the medical staff of a hospital," which indicates the endeavor would not be entrepreneurial in nature and he would not open his own clinic.

In response to the Director's request for evidence (RFE), the Petitioner submitted an undated business plan. The business plan describes [redacted] a proposed startup company to "provide a new healthcare solution for low to middle-income families . . . in [redacted] FL[, with] subscription and 'pay as you go' options." The business plan indicates that the Petitioner's startup company "will franchise its business after establishing a strong market presence . . . by the end of the second year." The business plan further states, though, that it will establish a strong market presence while "remaining lean for the first year of operations to conserve as much cash as possible . . . with 3 specialized employees who have experience operating in this primary care industry."

We note that the business plan is internally inconsistent regarding material details. For example, the chart of payroll expenses for each of the first five years indicates that the company will employ an "office manager," an "admin assistant," and a "controller" for each of the five years, adding one "assistant" in each of the second, third, and fourth years; however, none of the employees on the payroll during the healthcare company's first five years of operation appear to provide healthcare. We note that the business plan asserts that the company "will have experienced doctors who are invested in the success of the clinic [and who] will share 60% of the revenue that they help generate." However, the business plan does not elaborate on how many doctors will work at the company and the years during which the plan expects them to do so. Moreover, although the business plan contains anticipated profit and loss for the company's first five years of operation, neither the "direct cost" nor the details for the "total operating expenses" deductions, detailed within the business plan, correspond to or otherwise include 60% of the revenue allocated to doctors. In addition to omitting allocations of 60% of the revenue to doctors, the business plan indicates that the company expects net profits of

16.78%, 21.71%, 24.95%, 28.46%, and 33.79% in each of the first five years of operation, respectively, indicating that it would not have the ability to pay the doctors 60% of revenue.

A petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

The business plan's inconsistencies regarding who would provide healthcare services and how the Petitioner's startup company would have the ability to pay those individuals are material to the viability of the proposed endeavor—a startup healthcare company. The record does not resolve the internally inconsistent information provided in the RFE response business plan with independent, objective evidence. Therefore, the reliability and sufficiency of the business plan and other evidence submitted in support of the Form I-140, Immigrant Petition for Alien Workers, is minimized. *See id.*

The Director acknowledged that "the proposed endeavor has substantial merit." However, the Director concluded that the record "does not support that the [P]etitioner's proposed endeavor is of national importance." More specifically, the Director observed that the record "has not . . . established that the intended contributions will extend beyond the [P]etitioner's company, and [its] clients." The Director acknowledged the contents of the business plan but noted that "[t]here is no data provided alongside the growth rates to determine how these rates were calculated, or what they mean in the parameters of the business plan" or "how hiring up to six employees in an area with a population of over 300,000 would be considered as having national importance." The Director also acknowledged that "it is very likely the [Petitioner's] work would improve the life of their clients" but the Director observed that "the petition does not demonstrate that their work would broadly enhance societal welfare."

On appeal, the Petitioner references his qualifications and prior work experience, he asserts that his endeavor "generally does not adversely affect U.S. workers," and he references generalized articles about the healthcare industry, including a demand for healthcare services. The Petitioner also submits a new business plan, dated 2023.

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 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.

First, the Petitioner's focus on appeal on his qualifications and prior work experience with regard to the first *Dhanasar* prong is misplaced. Although an individual's education and prior work experience are material to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—they are immaterial to the first *Dhanasar* prong—whether a particular, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91.

Next, we acknowledge that the Petitioner asserts on appeal that his endeavor "generally does not adversely affect U.S. workers." However, whether an endeavor will adversely affect U.S. workers is not a factor in determining whether an endeavor will have national importance. In relevant part, *Dhanasar* acknowledged that broader implication of a proposed endeavor may be demonstrated by establishing "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. However, whether a proposed endeavor has a "significant potential to employ U.S. workers" or it "generally does not adversely affect U.S. workers" are separate issues. Moreover, an endeavor that "generally does not adversely affect U.S. workers" corresponds to a net neutral economic effect, but it does not articulate a "substantial positive economic effect[]." *Id.*

Next, the Petitioner's references on appeal to generalized articles regarding the healthcare industry are misplaced. As noted above, 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 id.* at 889. None of the articles the Petitioner references on appeal address either him or the specific endeavor that he proposes to undertake. Therefore, they do not provide information material to determining whether the proposed endeavor may have national importance. *See id.* at 889-90.

Although the Petitioner submits a new business plan on appeal, it cannot establish eligibility. A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). 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).

In addition to being dated 2023, after the petition filing date, the new business plan presents a new set of material facts that cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *Katigbak*, 14 I&N Dec. at 49; *Izummi*, 22 I&N Dec. at 176. First, rather than asserting that the company will employ only an "office manager," an "admin assistant," and a "controller" in the first year, the new business plan states that "the company's team will be composed of five highly skilled professionals, including [the Petitioner] as the Clinical Director, a [f]amily [m]edicine [p]hysician, a [p]hysician assistant, . . . a [h]ealth educator[,] and a [m]edical [o]ffice [m]anager to assist . . . in handling administrative tasks" in the first year. The business plan further asserts that the company will employ 18 workers, rather than just six employees, within the first five years of operation, including additional physicians, nurse practitioners, physician assistants, registered nurses, mental health counselors, health educators, and other support staff. Moreover, rather than indicating that the physicians would "share 60% of the revenue that they help generate," the new business plan lists the healthcare providers as payroll employees. Additionally, although the original business plan projected franchise income beginning in the second year of business, the new business plan asserts instead that the company "plans to extend its operations into South Carolina with a second unit . . . [a]fter three successful years." Although the new business plan contains other material changes, we limit our summarization of its changes here to the foregoing, for brevity.

The substance of the new business plan, summarized above, is material to the first *Dhanasar* prong because it describes the proposed endeavor, the anticipated scope of its operation, and the workers it intends to employ. *See Dhanasar*, 26 I&N Dec. at 889-90. Because the new business plan, dated after the petition filing date, presents a new set of material facts, it cannot establish eligibility, and we need not address it further. *See* 8 C.F.R. § 103.2(b)(1); *Katigbak*, 14 I&N Dec. at 49; *Izummi*, 22 I&N Dec. at 176. Relatedly, the initial business plan bears minimal probative value for the reasons discussed above, and thus it does not establish that the proposed endeavor has national importance. *See Matter of Ho*, 19 I&N Dec. at 591-92; *see also Dhanasar*, 26 I&N Dec. at 889-90. Furthermore, the Petitioner's submission of the new, materially changed business plan indicates that the Petitioner no longer intends to pursue the operation of the healthcare facility as described in the initial business plan, further reducing the initial business plan's probative value. Given the extent to which the initial business plan's probative value has been reduced, and because the new business plan cannot establish eligibility, the record does not sufficiently articulate a viable endeavor whose national importance can be assessed.

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) ("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 the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.