U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27440251

Date: AUG. 31, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a security consultant, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) 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 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the required job ofer, and thus of a 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 petition 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. 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.

Whilst 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 USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

We will address whether the Petitioner has established that a waiver of the job offer requirement, and thus of the labor certification, would be in the national interest.

The Director concluded that the Petitioner's substantially meritorious proposed endeavor did not rise to a level of national importance as required by the first prong of *Dhanasar*. The Director did not make a conclusion about how well positioned the Petitioner was to advance the proposed endeavor. And the Director concluded that on balance of applicable factors, a waiver of the requirement of a job offer, and thus a labor certification, would not be beneficial to the national interest.

On appeal, the Petitioner contends that the Director erroneously denied the petition. The Petitioner specifically assigned error alleging the Director did not consider evidence submitted in the record that demonstrated that the Petitioner meets all applicable prongs under the *Dhanasar* framework and merited a discretionary waiver of the job offer, and thus the labor certification, in the national interest.

A. The Proposed Endeavor

The Petitioner initially described their endeavor as a "security instructor" who would "provide security instruction services to law enforcement professional and private security agents" as well as perform the duties of a "search and rescue service instructor."[1] Specifically, as described in their professional plan and statement, they would chiefly "continue working in the fields of security and search and rescue, specializing in strategic operations, air traffic patrol, in the use of equipment for air, water, and land search and rescue, and firearm training" using "skills and knowledge" to "provide consultancy and service in these fields." As part of their endeavor, the Petitioner would also "contact American defense and rescue equipment companies to work as [their] sales representative and serve as a point of contact [with] the Federal and State Governments of Brazil."

In their response to the Director's request for evidence (RFE), the Petitioner maintained that the thrust of their proposed endeavor was the provision of private security services and consultancy, security instruction, search and rescue services and instruction, and sales representation for American defense companies and rescue equipment manufacturers in Brazil. But the Petitioner also incorporated an entrepreneurial element whereby they would establish a new venture, "1995 – Security & Training," through which they would develop and direct a business to provide security services for personnel and properties and security consulting and training services.

A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *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). The Petitioner's revisions here are troublesome. The activities of a security instructor differ manifestly from those of a security entrepreneur building and growing a small business. Materially different duties can tend to constitute a materially different endeavor and introduce ambiguities which prevent analysis into a proposed endeavor's substantial merit or national importance.

But the record here supports a conclusion that the Petitioner's substantial additions to the proposed endeavor submitted in response to the Director's RFE described a manner or philosophy through which the Petitioner would carry out their duties of their proposed endeavor and not a different proposed endeavor. So the Petitioner's extensive revisions, whilst concerning, did not disrupt the character and nature of the proposed endeavor initially described by the Petitioner.

B. The Proposed Endeavor's Substantial Merit and National Importance

We agree with the Director's conclusion that the Petitioner has not sufficiently demonstrated the national importance of their proposed endeavor under the first prong of the *Dhanasar* analytical framework. To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must

[1] The Petitioner stated that a component of their endeavor, providing private security services, required licensure/licenses from the Florida Department of Agriculture and Consumer Services. There is no evidence in the record reflecting that the Petitioner has any relevant U.S federal or state licensure/licenses. Whilst possession of required licensure/licenses is a consideration under *Dhanasar's* second prong to evaluate whether a Petitioner is well positioned to advance a proposed endeavor, the analysis of the Petitioner's endeavor under the first prong of the *Dhanasar* analytical framework is not influenced by the Petitioner's possession of any required license/licensure.

demonstrate that their proposed endeavor has both substantial merit and national importance. This prong of the *Dhanasar* framework focuses on the specific endeavor that the individual 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.

The record here supports the Director's determination that the Petitioner's proposed endeavor, which intends to support community security, policing, and public safety, has substantial merit. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirements, we look to evidence documenting the "potential prospective impact" of their work. In determining national importance under *Dhanasar*, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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.* The broader implications of the proposed endeavor, national and/or international, can inform us of the proposed endeavor's national importance. That is not to say that the implications are viewed solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. And 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. Thus, it is not what duties or what occupation the noncitizen will fill or perform but their actual plan with their occupation and duties that is examined.

Although the evidentiary standard in immigration proceedings is the lowest preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *see also* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

The evidence and argument the Petitioner introduced into the record does not help them carry their burden of production and persuasion. In support of their claim that they can satisfy the first prong of the *Dhanasar* analytical framework, the Petitioner provided their professional plan, an expert opinion letter, recommendation letters, academic and employment records, professional licenses, certificates, awards and other recognition, employment letters, pictures and reports from government and industry. The Petitioner attempted to link their endeavor providing security services and training security personnel to an overall goal of improving the safety and security of people and assets in a variety of environments (asset protection and search and rescue). The Petitioner's RFE response introduced documentation and information about an entrepreneurial endeavor, 1995 – Security and Training, which they would develop and direct as a conduit to provide the services described by their endeavor.

The Petitioner argued that the positive economic effects that would prospectively arise from their business endeavor had broader implications from the services to be performed by their endeavor rising to a level of national importance.[2]

The manifest thrust of the Petitioner's claim of eligibility for the act of discretion to waive the requirement of a job offer, and thus a labor certification, in the national interest comes from the Petitioner's claims regarding the importance of their profession, their past career as a member of the military police in their home country, and their dedication to their field. But these attributes, critical as they may be for the success of an endeavor, are not germane to the question of whether a proposed endeavor elevates to a position of national importance. We are not concerned with the individual petitioner when evaluating the first prong of the *Dhanasar* analytical framework; we are focused on the petitioner's proposed endeavor. The success of the endeavor, or attributes that could tend to make the endeavor more successful, are consequently not as important as determining whether the proposed endeavor itself stripped away from a petitioner, has attributes that would highlight the prospective positive impact of its broader implications or positive economic effects rising to a level of national importance. So we conclude that the Petitioner has not established that their proposed endeavor is of national importance.

It is also unclear from the evidence in the record that the work of a single security services endeavor providing private security and security instruction, irrespective of that proposed endeavor's success or failure, would have a significant impact on the field beyond its immediate sphere of influence. The evidence in the record does not highlight how the prospective potential impact of the work of one professional or group of professionals in a security consulting company could have broader implications implicating the national interest. The Petitioner tries to highlight their endeavor's broader implications by linking it to the overarching desire of individuals and companies in the United States to have a safe environment where their possessions and their person are secure and protected. But, as we stated earlier, we do not view the broader implications of a proposed endeavor through a geographical lens. Whilst the safety and security of individuals and their possessions is of merit, the record does not sufficiently describe how the services the Petitioner would provide to individuals or entities for asset and personal protection implicate the greater national interest. The provision of security services directly benefits only those individuals or entities availing themselves of the Petitioner's services. For example, the record does not adequately describe how the strengthening of asset protection and security for those companies that engage the Petitioner's services would broadly implicate the asset protection and security for those companies and individuals beyond the Petitioner's sphere of influence. This is akin to how the benefit of someone's teaching is generally only directly beneficial to the students being taught and not wider population. In *Dhanasar* we discussed how teaching would not impact the field of education broadly in a manner which rises to national importance. *Dhanasar* at 893. By extension activities which only benefit a small subset of individuals and companies, like the Petitioner's proposed security consultancy, would not rise to a level of national importance. The record does not contain any meaningful analysis of the Petitioner's security services' broader implications or potential prospective economic impact rising to the level of national importance. And the letters of recommendation containing testimonials of the services the Petitioner performed do not describe how the benefits they have received connect to broader implications rising

[2] While we may not discuss every document submitted, we have reviewed and considered each one.

to national importance or any nationally important economic impact.[3] In sum the record supports the conclusion that the potential impact of the endeavor of providing private security for personal and asset protection and related instruction would benefit only the individuals and entities engaging the service.

The record also contains insufficient evidence to support the positive economic effects the Petitioner expects will be realized by their proposed endeavor. The Petitioner roots the potential positive effects of their unrealized security consultancy, 1995 – Security and Training, in their potential for job creation in areas experiencing high unemployment and revenue generation. The Petitioner optimistically expects that the endeavor would realize total revenue of $1,986,000 and an employee census of 38 people within five years of establishment. But the record contains insufficient documentation to support the Petitioner's projections. For example, the record does not support how the services the Petitioner provided would generate the income or what steps could be taken to entice employment in the particular area. The Petitioner contends that they plan to locate in an [redacted] Florida "Opportunity Zone" which they indicate are low-income communities from designated census tracts. The Petitioner stated that they would establish their security consultancy in an [redacted] Florida "Opportunity Zone," because it is an area which they described as "riddled with crime." But the evidence in the record does not describe to what extent "Opportunity Zones" are "riddled with crime." Moreover, the record does not describe which specific "Opportunity Zone" the Petitioner intends to establish in. This impedes an evaluation of potential prospective impact the hiring spree the Petitioner intends to undertake and the broader implications arising from the employment of individuals in the endeavor in an "Opportunity Zone."

The Petitioner also indicated in the record that a significant component of their endeavor would be a "security consulting and training service" for the purposes of offering "non-lethal training services" teaching clients "how to detect and prevent unauthorized activity." This personal security knowledge proliferation is akin to teaching activities. In *Dhanasar*, we considered a petitioner's teaching activities and concluded that teaching activities do not rise to the level of having national importance because they do not impact a field of endeavor more broadly than the immediate effect or influence on the cohort receiving the teaching. *See Dhanasar*, 26 I&N Dec. at 893. The record does not adequately support that the Petitioner's personal security knowledge proliferation through their security consulting and training service will have an impact on the field of security consulting in the United States. The record does not have a cognizable or detailed plan for reaching an audience wider than the individuals it will purportedly consult with and train in the future. Nor does the record illuminate how the Petitioner's services to present clients with "the tactics, techniques and procedures necessary to recognize, reduce and manage" personal security issues would have impact beyond the group of individuals or entities they may serve.

USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* The Petitioner submitted a letter authored

[3] Much of the documentation the Petitioner has submitted focuses on their individual accomplishments and expertise when attesting to the national importance and substantial merit of the proposed endeavor. It is important to note that the Petitioner's accomplishments and expertise are more relevant to the second prong of *Dhanasar*, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar* at 889.

by [redacted], United States Air Force Junior Reserve Officer Training Corps (USAF JROTC). The letter's author, [redacted] is not a personal security industry expert – they are a [redacted] of the USAF JROTC. The record does not make clear how their experience and individual qualifications render them a personal security industry expert such that their opinion could shed light on the national importance of the Petitioner's endeavor. Setting aside the authors' credentials, we observe that much of the letter's content lacks relevance when it comes to the evaluation of whether the Petitioner's work rises to the level of national importance. The Petitioner planned on serving as a sales agent for American companies in the "defense" industry seeking to do business in Brazil as part of their endeavor. [redacted] identifies opportunities for collaboration between United States and Brazil in common interest of defense, such as research and development, technology security, and the acquisition of products and services. But it is not clear from the record how these opportunities correspond to the personal security services and training that the Petitioner intends to accomplish in opportunity zones in the [redacted] Florida area. And, even if we were to view the sales representation activities in isolation, it would still not have sufficiently demonstrated in the record what the broader implications of these sales activities would be that rise to a level of national importance. For example, the Petitioner has not sufficiently described in the record the broader implications of the potential prospective impact of proliferation of United States defense products in Brazil that rise to a level of national importance.

C. Well-Positioned to Advance the Proposed Endeavor

Since the Petitioner did not demonstrate the national importance of their proposed endeavor, the resolution of that issue by itself requires dismissal of their appeal. But since the Director's decision made no specific conclusions about the Petitioner's eligibility under *Dhanasar's* second prong, we will discuss whether the Petitioner is well positioned to advance the proposed endeavor.

We conclude the Petitioner has not sufficiently demonstrated that they are well positioned to advance their proposed endeavor under the second prong of the *Dhanasar* analytical framework. In evaluating whether a petitioner is well positioned to advance their proposed endeavor under the second prong of *Dhanasar*, we review (A) a petitioner's education, skill, knowledge, and record of success in related or similar efforts; (B) a petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing; (C) any progress towards achieving the proposed endeavor; and (D) the interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

As stated above, a petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Y-B-*, 21 I&N Dec. at 1142 n.3. The record contains evidence of the Petitioner's academic record, employment history, and professional recognitions such as awards and certificates. But simply having education, skills, and/or knowledge in isolation do not place a petitioner in a position to advance their proposed endeavor. This is only one factor amongst many factors which are evaluated together to determine how well positioned a petitioner is to advance a proposed endeavor. It is not clear from the totality of the evidence in the record how an individualized consideration of the multifactorial analysis under *Dhanasar's* second prong would demonstrate how well positioned the Petitioner is to advance their proposed endeavor.

For example, the Petitioner's business plan identified a target audience for their proposed endeavor and listed a variety of ways in which they would engage with their target audience through website optimization and social media. But a search engine optimization and social media marketing plan to engage with individuals and entities seeking asset protection and personal security did not demonstrate a model for the actual activities that the Petitioner has developed or played a significant role in developing to advance their proposed endeavor. The business plan instead only placed heavy emphasis on what the Petitioner had done in their past and their qualifications to continue the same activities in the future. The record simply does not reflect any progress to achieving the proposed endeavor.

And the record does not reflect how the Petitioner's prior activities as described in the recommendation letters is either a similar effort as that of their proposed endeavor or how it constitutes a record of success. And the recommendation letters the Petitioner submitted are not material, relevant, or probative evidence in the record of interest or support in the endeavor the Petitioner proposed in their petition. Whilst they speak generally of the Petitioner's realization of certain objectives and skill in their field, they do not identify any recognition, achievements, or significant contributions to their field that tend to reflect that the Petitioner is well-positioned to advance their endeavor.

So the Petitioner has not demonstrated with material, relevant, and probative evidence that they are well-positioned to advance their proposed endeavor.

III. CONCLUSION

Because the Petitioner has not met the requisite first or second prong of the *Dhanasar* analytical framework, we conclude that they do not merit a favorable exercise of discretion to waive the requirement of a job offer, and therefore a labor certification. We reserve the issue of whether the Petitioner demonstrated categorial eligibility under the EB-2 classification and eligibility under the remaining prong of the *Dhanasar* analytical framework respecting whether, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *See INS v Bagamasbad*, 429 U.S. at 25 and *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

In immigrant petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met their burden of proof with persuasive material, relevant, and probative evidence which by a preponderance demonstrates the national importance of their proposed endeavor. So their appeal must be dismissed.

ORDER: The appeal is dismissed.