U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28819101

Date: DEC. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a management consultant, seeks classification as a member of the professions holding an advanced degree. 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 attached to this EB-2 classification. *See* section 203(b)(2)(B)(i) of the Act. 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 qualifies for the EB-2 classification as an advanced degree professional but that the record did not establish that a waiver of the job offer requirement is 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 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 a matter of discretion,[1] 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. ANALYSIS

The Director found that the Petitioner established eligibility for the EB-2 classification as an advanced degree professional. Based upon the evidence in the record that the Petitioner obtained the foreign equivalent of a bachelor's degree in business administration followed by more than five years of progressive work experience in sales, finance, and business management, we agree. The Director also found that the Petitioner established the substantial merit of the proposed endeavor and that he is well-positioned to advance it. However, the Director found that the Petitioner did not establish the national importance of the endeavor or that, on balance, waiving the job offer requirement would benefit the United States. On appeal, the Petitioner submits a brief in which he asserts that he has established eligibility for a national interest waiver.

The Petitioner proposes to establish a management consulting business, [redacted], based in [redacted], Florida. The Petitioner states that the company will offer services such as corporate strategy consulting, financial advisory services, process and operation management consulting, human resources consulting, and marketing and sales consulting.

In finding that the Petitioner did not establish the national importance of the proposed endeavor, the Director concluded that the evidence overall did not show that the proposed endeavor stands to sufficiently extend beyond the company and its clients to impact the industry more broadly. The Director noted that the relevant question in the national importance determination is not the importance of the field, industry, or profession in which the individual will work, but rather the specific endeavor that the individual proposes to undertake. The Director concluded that the articles and reports that the Petitioner submitted, although they related to consulting services and doing business in the United States, did not discuss the Petitioner's specific endeavor or its potential impact. Similarly, the Director found that both the expert opinion letter and counsel's brief emphasize the importance of the Petitioner's field, rather than discussing the impact of the Petitioner's specific endeavor. The Director also reviewed the business plan and concluded that it did not establish that the proposed business would significantly impact the poverty rate or living conditions in the region as claimed or that it stands to provide significant positive economic benefits. The Director discussed the letters of recommendation submitted and concluded that, although they praise the Petitioner's professional achievements and qualifications, the authors did not sufficiently discuss the proposed endeavor or describe how it would have national importance. Finally, the Director concluded that the evidence related to the importance of STEM (science, technology, engineering, and math) fields did not establish that the prospective impact of the Petitioner's business rises to the level of national importance.

[1] *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).

On appeal, the Petitioner asserts that the Director, in considering national importance, did not apply the proper standard of proof, and instead imposed a stricter standard than a preponderance of the evidence. The Petitioner reiterates his claim that he has established the national importance of the endeavor because the services that the company will provide are needed and valuable, the company will create jobs and benefit the economy, and the company will benefit its clients' businesses and the U.S. economy in turn.

In determining national importance, we consider an endeavor's potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that has significant potential to employ U.S. workers or to have other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Id.* at 890.

The Petitioner notes as an initial matter on appeal that in the Director's decision there are several places in which the Director uses the pronouns "she" or "her," although the Petitioner is male. The Petitioner cites this language from the decision on appeal:

> USCIS can consider information about the petitioner's current and prospective positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the first prong of the *Dhanasar* analytical framework. Continuing employment in one's position, field, or industry is not an endeavor sufficient to evaluate under this analytical framework.

The Petitioner states that these are "troubling and discrepant errors" that indicate either the Petitioner's case has been confused with another petition or that the Director used "pre-prepared responses" and incorrectly applied them. But in looking at the decision overall, we do not agree that the Director did not properly or meaningfully analyze the record in this case. Rather, the Director's decision clearly refers to specific evidence in the record and is detailed in its analysis of that evidence. Moreover, the specific language which the Petitioner references here could be read as using the pronouns in a general sense to provide background information on the relevant legal requirements, rather than referring to the Petitioner specifically. Although we acknowledge that the Director used feminine pronouns in several places, in the context of the decision overall, this claimed error is, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 350 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors). Nevertheless, we conduct a de novo review on appeal, and we have considered the evidence in the record in full. While we may not discuss each piece of evidence in our decision, we have reviewed and considered each one.

The Petitioner next reiterates on appeal the claim that the articles and reports in the record establish the national importance of the proposed endeavor. The Petitioner discusses specifically a Bloomberg article about the shortage of management consulting professionals and an article about how consultants can help small businesses. Although the Petitioner claims that the articles help establish the national importance of the endeavor, the Petitioner does not address the Director's conclusion that these articles relate to the importance of the industry in general, rather than establishing the national importance of the Petitioner's specific endeavor. For example, as to the Bloomberg article about the shortage of

management consulting professionals, the evidence does not demonstrate that the Petitioner's consulting services stand to have an impact on this shortage that would rise to the level of national importance. We agree with the Director that in determining national importance, the relevant question is not the importance of the industry or profession in which the 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. As such, we conclude that the articles and reports in the record do not establish that the Petitioner's specific proposed endeavor has national importance.

The Petitioner also emphasizes on appeal the potential financial benefits of the proposed endeavor as demonstrated in the business plan. Additionally, the Petitioner contends that the specific issues the Director noted regarding the plan were in fact properly addressed. For example, the Director found that the plan was unclear because it provides an estimate for payroll taxes without providing an estimate for payroll expenses. The Director also questioned whether there would be a large potential clientele for the company's relatively specialized services and stated that the plan "does not establish how impoverished persons in the claimed under served areas will be able to afford his services." The Petitioner asserts that the payroll expenses are in fact provided in the plan and that the estimates for potential clientele are sufficiently explained and are based on U.S. Census Bureau data about the number of small manufacturing businesses operating in Florida.

We acknowledge that the plan does list individual estimated wages for potential workers, although we could not locate an estimate for total payroll expenses. Additionally, the plan does discuss the number of manufacturing businesses in Florida based on U.S. Census Bureau data. But even if we accept the business plan's assumptions, such as to the percentage of those businesses that will hire the company and pay for its services, the plan projects that it will have 30 workers and pay approximately $500,000 in payroll taxes in its fifth year of operations. Even were we to assume that these projections are credible, the Petitioner has not explained how the creation of 30 jobs in five years would have a substantial positive economic effect, either regionally or nationally, commensurate with national importance. We agree with the Director that the record does not establish the endeavor's significant potential to employ U.S. workers or to have other substantial positive economic effects as described in *Matter of Dhanasar*. *Id.* at 890.

The Petitioner next addresses on appeal the Director's finding that the letters of recommendation relate to the Petitioner's past work and achievements and do not sufficiently discuss the Petitioner's proposed endeavor or its national importance. The Petitioner contends that the letters are, in fact, relevant in establishing national importance, stating that with this consulting business the Petitioner "plans to do exactly the same work he did and is doing in Brazil, that is helping his customers and their respective companies to reduce costs and leverage their sales and earnings, thus positively impacting the local and national economy."

In reviewing the letters of recommendation, we acknowledge that they help show that the Petitioner is an experienced consultant in Brazil who appears to be well-respected by his colleagues and customers. One of the letter writers, a prior colleague of the Petitioner, states that the Petitioner was known to provide excellent service to his clients. They write, for example, that "[o]ften, customers had not even identified a problem in their production line and with [the Petitioner's] experience and sensitivity, he detected the point of attention and took the solution to the customer who was generally delighted with the service . . . ." Another one of his former colleagues states that the Petitioner brought

in a large portfolio of clients to their company, consistently exceeded his performance goals, and that "[e]veryone was aware of his management methods and started to adhere to his formats for a simple reason: [his] results were very good and everyone wanted to know how he did it." The Petitioner also submitted letters from prior clients who were pleased with his work and whose companies benefitted from his management consulting and financial advisory services.

But the record does not contain evidence that the Petitioner's past achievements have resulted in a broad impact on the consulting field or impacted the economy in Brazil, and the Petitioner's unsupported statement to the contrary is insufficient to meet his burden of proof. We agree with the Director that the evidence of a petitioner's skills, knowledge, and record of success generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether they are well-positioned to advance it. *Matter of Dhanasar*, 26 I&N Dec. at 890. While a petitioner's past work and achievements can be helpful in illustrating how they plan to carry out their proposed endeavor and in some circumstances its potential to have a broad impact, in general the focus of the first prong is on the proposed endeavor itself and not the petitioner. *See id.* The issue here is whether the Petitioner's specific endeavor—operating a management consulting business in Florida— has national importance under *Dhanasar's* first prong. The Petitioner has not provided evidence of achievements in the field that demonstrate that the endeavor has the potential to impact the consulting field or the economy at a level commensurate with national importance.

The Petitioner also contends that, under the *Dhanasar* framework, a petitioner may establish national importance by demonstrating that they aim "to solve certain problems that are present nationwide, even if the endeavor is in one geographic location" and that "by welcoming highly qualified foreign nationals that will introduce successful ideas and methods in one geographic area in the U.S., these improvements and innovations could be replicated across the country for a larger impact, thus making them important on a national scale even if their scope is not." But the Petitioner does not describe offering specific "improvements and innovations" in management consulting that could be replicated across the country. The evidence in the record does not establish that the Petitioner has a particular management consulting service model or methodology that is different from what is currently available on the market, that is replicable, and that he intends to disseminate through the field on a scale that would be commensurate with national importance. Rather, the Petitioner describes his proposed endeavor as simply continuing to offer management consulting services. The Petitioner has not offered sufficient information or evidence to establish that by offering his management consulting services, his ideas and methods have the potential to result in a broad impact on the consulting field.

Throughout the Petitioner's appeal brief, he repeats his claims that the proposed business will create jobs, provide needed services to its clients, and contribute to the economy by paying taxes and improving its client businesses' profitability. Although the record reflects the Petitioner's experience in the field and his intention to provide valuable services to his clients, the Petitioner has not offered sufficient 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 extend beyond his students to impact the education 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

the management consulting industry or the U.S. economy at a level commensurate with national importance.

The Petitioner's claims on appeal do not overcome the basis for the Director's findings as they relate to the national importance of the proposed endeavor. Moreover, upon de novo review, we agree that the Petitioner has not established the national importance of the proposed endeavor. Because the documentation in the record does not establish national importance as required by the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second and third *Dhanasar* prongs. *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 the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.