U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28980877

Date: DEC. 19, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an international tax specialist, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *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 Nebraska Service Center denied the petition, concluding the Petitioner qualified for classification as a member of the professions holding an advanced degree but that they 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 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

The Director observed that the Petitioner was eligible for EB-2 classification as an individual who is a member of the professions holding an advanced degree. But the Director ultimately concluded that the Petitioner's substantially meritorious[1] proposed endeavor did not rise to a level of national importance as required by the first prong of *Dhanasar*. The Director also determined that the Petitioner was not well positioned to advance their 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 the Director's decision was based on an erroneous conclusion of law and facts. Specifically, the Petitioner contends the Director applied a higher standard of proof

[1] The Petitioner submitted numerous articles, web pages, and reports from non-profit research organizations and executive level agencies related to foreign direct investment in the United States. This evidence supported the overall merit of the Petitioner's proposed field of endeavor. So the Director correctly concluded the Petitioner's proposed endeavor had substantial merit. But, contrary to the Petitioner's assertions, the same evidence does not adequately describe how the Petitioner's specific proposed endeavor would elevate foreign direct investment in a manner commensurate with matters of national importance.

than the preponderance of the evidence standard, disputes the Director's conclusion that the Petitioner materially changed their endeavor in response to the Director's request for evidence (RFE), erroneously used a female pronoun for the Petitioner (who identifies as male),[2] and in summary did not consider the totality of the evidence the Petitioner submitted. They state on appeal that the evidence they submitted in the record prior to and at appeal demonstrated that the Petitioner meets all three prongs under the *Dhanasar* framework and merits a discretionary waiver of the job offer, and thus the labor certification, in the national interest.

A. The Proposed Endeavor

In Part 6 of the initial petition, the Petitioner described their endeavor as an "international tax advisor" who would "analyze accounting reports to determine how to ensure [a] company's compliance with all international tax laws and regulations, such as paying international income taxes…organizing and filing tax returns, accounting reports, and doing other paperwork necessary for compliance or audits." Specifically the Petitioner's proposed endeavor, as described in their statements and their business plan, sought to attract foreign direct investment to the United States from "high-net-worth investors" via employment as an international tax consultant with [redacted], [redacted], and [redacted] The investment by foreign "high-net-worth" investors, primarily from Brazil, via the Petitioner's endeavor utilizing a "methodology" the Petitioner developed was anticipated to result in tax generation, indirect and direct job creation, and overall economic growth. The Petitioner also asserted their proposed endeavor supported critical infrastructure and conferred a benefit to "overall societal welfare" from their endeavor during the COVID-19 response.[3]

B. National Importance

The Director concluded that the Petitioner did not demonstrate their proposed endeavor was of national importance because the Petitioner did not demonstrate the broader implications of the proposed endeavor or its potential positive economic effects. For the below reasons, we agree.

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 a 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

[2] We have noted and considered the single occurrence of incorrect pronoun usage error by the Director in their decision and conclude it did not impact the ultimate decision in this matter.

[3] In their response to the Director's request for evidence (RFE), the Petitioner maintained that their proposed endeavor would be performed via their employment as an international tax consultant with [redacted] 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). We depart from the Director's conclusion that the Petitioner made a material change to their endeavor in response to the RFE. The record here supports that the Petitioner consistently expressed the nature of their proposed endeavor at initial filing and in the professional plan they submitted in response to the Director's RFE.

economically depressed area, for instance, may well be understood to have national importance." *Id* at 890. What is critical in determining the national importance under *Dhanasar* is whether the proposed endeavor has a potential prospective impact with broader implications which rise to the level of national importance. So 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.

As stated above, the Petitioner's proposed endeavor is to continue their career as a "international tax advisor" working with "high-net-worth individuals" interested in investing and forming companies in the United States. The Petitioner roots their eligibility under this first prong of the *Dhanasar* framework by touting the byproducts of their employment, the host for their proposed endeavor. The Petitioner submitted two personal statements, their curriculum vitae, academic documents, evaluations, and certificates, job offer, letter of interest, photos, several letters of recommendation, a work sample, two expert opinion letters, and wage and tax statements.[4] The Petitioner contends that national importance is broadly implicated by the potential value of their continued work in their field of endeavor achieving their investment objectives on behalf of their high-net-worth clients.

The Petitioner asserts that they constrained the scope of the documentation they presented to support their assertions "due to the extremely confidential nature of [the Petitioner's] endeavor, which is inextricably linked to…financial and fiscal sensitive data." 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); *also see* 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 to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits. So the Petitioner's self-imposed restriction to the scope of evidence they choose to submit into the record to support their assertions of eligibility for the immigration benefit they seek does not relieve them of their burden of proof.

The infirmity in the Petitioner's description of their endeavor is patent upon examination into the evidence and argument they introduced into the record. The Petitioner's evidence and argument do not help them carry their burden of production and persuasion because it does not relate to the proposed endeavor's national importance under the first prong of the *Dhanasar* framework.

The Petitioner essentially stresses that it is their *execution* of the proposed endeavor is what will elevate it to a level of national importance due to their continuous work in the field over 15 years. The Petitioner stated that their past work experience and achievements render their work in their proposed endeavor likely to achieve results that will benefit the United States national interest. On appeal, the Petitioner essentially attempts to convince us that their many years of progressive experience representing over 120 "ultra-high-net-worth foreign investors" to establish and maintain new companies as investments elevates any endeavor they propose to undertake in the United States raised

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

to the level of national importance. They also highlight their self-professed status as a "leader" in international tax and "intimate knowledge of and ability in" South American and US tax legislation as evidence that their proposed endeavor is "aligned with the national interest of the United States." But the Petitioner's claims are not persuasive. The Petitioner's argument spotlights a fundamental misunderstanding of the *Dhanasar* framework's first prong. The first prong focuses on the proposed endeavor; not on the Petitioner's execution of that proposed endeavor. The *Dhanasar* framework is consequently unconcerned with the success of the proposed endeavor or the Petitioner's track record in their field of endeavor previously. The Petitioner's contentions about their successful past performance in the field of endeavor they propose, as well as evidence and information of their achievements and recognition, would better serve a demonstration of eligibility under the *Dhanasar* framework's second prong. So the Petitioner's contentions about their successful career-to-date, as well as evidence and information of their achievements and recognition such that they are, are irrelevant to an examination of their eligibility under the first prong of the *Dhanasar* analytical framework.

The Petitioner's employment verification letters, letters from employers, and letters of recommendation did not reflect how the proposed endeavor implicates national importance because the letters focused on the Petitioner's past work. When evaluating the national importance of a proposed endeavor under the first prong of *Dhanasar*, we are concerned with its potential prospective or future impact. The Petitioner's demonstration of prior similar work does not have an influence on the proposed endeavor's potential prospective impact based on its national importance.

Moreover, the "scientific publications" edited or co-edited by the Petitioner as well as their educational certificates and certificates of participation in lectures and a "Road Show" under the auspices of the [redacted] do not illuminate their endeavor's national importance. The certificates earned by the Petitioner relate to them as an individual and their own personal participation in activities to enrich a community of professionals or promote business development. But the proposed endeavor's national importance stands separate and apart from the Petitioner's skills or experience.[5]

The Petitioner submitted a December 16, 2020 "Advisory Memorandum on Ensuring Essential Critical Infrastructure Workers' Ability to Work During the COVID-19 Response"[6] from the United States Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) ostensibly to support their assertion that their international tax specialist duties performed in their proposed endeavor supported critical infrastructure. But CISA's advisory memorandum does not support the Petitioner's assertions. The advisory memorandum identified workers in 17 different industry categories with workers supporting critical infrastructure. The legal industry, which appears to fit the Petitioner's education and description of their proposed endeavor, is not included amongst the 17 different industry categories in CISA's advisory memorandum. And although the Petitioner provides international tax advice, the record does not adequately explain how the Petitioner's work is "supporting the operations of the judicial system including judges, lawyer, and other providing legal

[5] As stated previously, the Petitioner's education, skills, and knowledge are a relevant point for evaluation under *Dhanasar's* second prong.

[6] The Petitioner submitted version 4.0 of this document with their RFE response received on February 17, 2023. We note that CISA issued a revised version 4.1 of the advisory memorandum on August 5, 2021, So the Petitioner's evidence was out of date and superseded on the date they submitted it to support their assertions.

assistance." In other words, it is unclear from the record how providing international tax advice would correspond to supporting judicial operations or other matters in a functioning court system as contemplated in the CISA advisory memorandum. And even if we emphasized the financial and tax aspects of the Petitioner's proposed endeavor and evaluated whether the Petitioner's proposed endeavor falls within the financial services industry category, we would still conclude the Petitioner's proposed endeavor does not support critical infrastructure. Whilst the category lists workers maintaining financial systems, orderly market operations, bank and non-bank financial services, financial call center, production and distribution of credit and debit card, point of sale terminal support, and workers supporting law enforcement requests, it does not include workers in international tax or performing similar duties to increase foreign direct investment. And in their brief on appeal, the Petitioner selectively includes workers from categories not related to the Petitioner's proposed endeavor, such as the education industry, because they highlighted their intention for their proposed endeavor to have a component wherein they educate clients and other professionals. The Petitioner does not sufficiently clarify with evidence in the record how the teaching aspect of their endeavor would characterize their endeavor as an occupation within the education category in CISA's advisory memorandum. Moreover, we have previously stated in *Dhanasar* that teaching activities did not rise to a level of having national importance because teaching activities do not have an impact on a specific field more broadly. *Dhanasar* at 893.

As stated earlier, the Petitioner offered sufficient evidence to support the merit of increasing foreign direct investment in the United States and offered the same evidence to support the national importance of their proposed endeavor. But not every endeavor that purports to increase foreign direct investment in the United States is nationally important. We said in *Dhanasar* that we focus on "the specific endeavor that the foreign national proposed to undertake" and "look for broader implications" to determine the proposed endeavor's national importance. *See Dhanasar*, 26 I&N Dec. at 889. The evidence in the record did not sufficiently describe the magnitude of foreign direct investment the Petitioner's endeavor proposed to generate. The magnitude of the foreign direct investment the Petitioner expected their proposed endeavor to generate is a key consideration to evaluate whether the potential prospective impact of the Petitioner's proposed endeavor to increase foreign direct investment in the United States through primarily Brazilian ultra-high-net-worth individuals would rise to a level of national importance either through its broader implications or positive economic impact. The Petitioner offered a redacted "tax return form" they asserted "amounts to $3,261,765." It is not clear from the Petitioner's assertion whether the amount is gross income, net income, or total investment. Moreover, the excerpted page from their client's Form 1040 indicated the "$3,261,765" corresponded to "total payments" and not investment or income. And to the extent the Petitioner is asserting that "$3,261,765" is the amount of tax paid by the Petitioner's client, that fact does not adequately describe the national importance of the Petitioner's proposed endeavor. The record does not contain evidence which would sufficiently support extrapolating one data point from one client's financial information to determine whether the potential prospective impact of the Petitioner's proposed endeavor has broader implications or positive economic impact rising to a level of national importance.

The Petitioner also asserted that they have developed a "methodology" which they intend to utilize via their proposed endeavor to increase foreign direct investment in the United States. However, the sample "tax and investment plan" the Petitioner provided to illustrate their "methodology" appeared to be a presentation to a particular client summarizing their unique situation. The "tax and investment

plan" does not adequately describe the Petitioner's "methodology" implemented through their proposed endeavor such that we could evaluate the potential prospective impact of the proposed endeavor through its broader implication or positive economic effect.

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 casts two letters from their employers as "expert opinion letters." We have earlier discussed that these letters focused on the Petitioner's past work and not on their proposed endeavor.

The Petitioner specifically emphasized two "independent expert opinion letters" from Professor [redacted], associate professor at the [redacted], and [redacted], partner in [redacted], to support assertions of the national importance of the Petitioner's proposed endeavor. But these "independent expert opinion letters" do not illustrate how the Petitioner's proposed endeavor rises to a level impacting national importance either.

From the outset, we raise concerns with the reliability of the "independent expert opinion" provided by [redacted] because it contains several inconsistencies. [redacted]'s resume accompanying their letter identified them as having earned a PhD and master's degree in governmental accounting. But, in their opinion letter, [redacted] states they have earned a master's degree in "Public Administration" and a PhD in "Public Administration and Public Policy." Accordingly, it is not clear what field [redacted] is an expert in and what knowledge base and experience they base their opinion on. [redacted] also evaluated the Petitioner's proposed endeavor's national importance in vague or generalized conclusions. For example, [redacted] discussed how "taxes help raise the standard or living in a country" and "is a vital source of revenue" for governments. But [redacted] does not describe how the tax collection related to the Petitioner's proposed endeavor, which is to increase foreign direct investment in the United States from ultra-high-net-worth individuals from South America in general and Brazil in specific. And [redacted] discussion of taxes does not sufficiently identify the broader implications of the Petitioner's proposed endeavor or any substantial positive economic effects, particularly in an economically depressed area. And [redacted] emphasis on the Petitioner's education, skills, and experience is misplaced because we evaluate a proposed endeavor's substantial merit and national importance divorced from the individual Petitioner's credentials.

And [redacted] opinion exclusively makes generalized pronouncements about the Petitioner's background and skill, both of which are wholly irrelevant to an evaluation of the Petitioner's proposed endeavor under the first prong of the *Dhanasar* framework. And whilst [redacted] generally described the benefits of increasing tax revenues to support federal and state government's ability to fund hospitals, school, roads, and other essentials, they did not adequately describe the broader implications of the Petitioner's proposed endeavor which could cast its potential prospective impact as nationally important.

So we conclude that the Petitioner has not established that their proposed endeavor is of national importance.

III. CONCLUSION

As the Petitioner has not met the requisite first 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. And we reserve the issue of whether the Petitioner demonstrated eligibility under the remaining prongs of the *Dhanasar* analytical framework. *See INS v Bagamasbad*, 429 U.S. at 25 and *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. So we dismiss the Petitioner's appeal.

ORDER: The appeal is dismissed.