U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27437635

Date: JUL. 6, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an economist, seeks classification under the employment-based, second-preference ("EB-2") immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act ("the Act") section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer - and the related requirement for certification from the U.S. Department of Labor (DOL) - if a petitioner demonstrates that a waiver would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director found the Petitioner qualified for the requested immigrant visa category as a member of the professions holding an advanced degree. *See* section 203(b)(2)(A) of the Act. But the Director concluded that the Petitioner did not demonstrate that his plan to establish a U.S. consulting company for small businesses warrants a national interest waiver. Specifically, although the Director found the Petitioner "well-positioned" to advance the endeavor, the Director concluded that he did not establish the "national importance" of his proposal or that, on balance, a waiver would benefit the United States. On appeal, the Petitioner asserts that his proposal could prevent election fraud and restore trust in the country's democratic processes.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with the Director that the Petitioner has not sufficiently demonstrated that his proposed work has national importance. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must demonstrate their qualifications for the requested immigrant visa category, either as an advanced degree professional or as a noncitizen of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. This category generally requires a prospective U.S. employer to seek a noncitizen's services and obtain DOL certification to permanently employ them in the country. Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, a petitioner must

demonstrate that waiving these U.S.-worker protections is in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, we have established a framework for adjudicating requests for national interest waivers. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016). If otherwise qualified as an advanced degree professional or noncitizen of exceptional ability, a petitioner may merit a waiver of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavor; and
- On balance, a waiver of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

The record shows that the Petitioner, a Venezuelan native and Italian citizen, earned an economist and master of business management degrees in Venezuela, as well as diplomas in: advanced studies in science and techniques of government; business intelligence; and key performance indicators. He worked about 10 years for a large petroleum company, providing cost analyses and guidance on strategic planning, business operations management, finances, and budgets. He then spent the next 10 years working for Venezuelan state and city governments, creating development plans and managing public investment projects. For most of the past 10 years, he has served as a business analyst and consultant, specializing in business intelligence, data analytics, and data visualization.

The Petitioner proposes to establish a consulting company for small businesses in Florida and eventually expand its operations to other states. He says that he has already lined up two or three projects for the company.

A. The Requested Immigrant Visa Category

The Petitioner submitted evidence demonstrating the equivalency of his Venezuelan master's degree to a U.S. master's of business administration degree, with a major in marketing management. The term "advanced degree" includes a foreign degree equating to a U.S. academic or professional degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). We therefore agree with the Director that the Petitioner qualifies for the requested immigrant visa category as an advanced degree professional.

B. Substantial Merit

Proposed endeavors may exhibit substantial merit in a variety of fields, including: business; entrepreneurship; science; technology; culture; health; or education. *Matter of Dhanasar*, 26 I&N Dec. at 889. Their potential economic benefits may demonstrate their worth. *Id.* But "merit may be established without immediate or quantifiable economic impact," and "endeavors related to research, pure science, and the furtherance of human knowledge may qualify, whether or not the potential

accomplishments in those fields are likely to translate into economic benefits for the United States." *Id.*

The Petitioner's business plan does not estimate how much revenue his proposed consultancy would generate. But the plan states that - besides the Petitioner - the business would initially need seven workers: three professionals with knowledge of economics, finance, business management, and business and systems development; a secretary; a business consultant; an accountant; and a marketing and sales executive. Thus, the plan indicates that the business could generate at least seven jobs for U.S. workers.

Also, the Petitioner provides statistics indicating that most U.S. employees work for small businesses. Therefore, his consulting services to his small-business clients could spur secondary job growth and revenues.

Further, the Petitioner notes that the U.S. government seeks to promote legal immigration to the country, especially by entrepreneurs. "New Americans and their children fuel our economy, working in every industry, including healthcare, construction, caregiving, manufacturing, service, and agriculture. They open and successfully run businesses at high rates, creating jobs for millions." Exec. Order No. 14012, 86 Fed. Reg. 8277, 8277 (Feb. 2, 2021). The Petitioner's endeavor would support this policy. We therefore affirm the Director's finding that the Petitioner's proposed work has substantial merit.

C. National Importance

When determining whether a proposed endeavor has national importance, USCIS considers the undertaking's "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Agency focuses on the nature of the specific proposed endeavor, rather than its geographic scope. *Id.*

"An undertaking may have national importance for example, because it has national or even global implications within a particular field, such as certain improved manufacturing processes or medical advances." *Id.* An endeavor may also demonstrate national importance if it has "significant potential to employ U.S. workers" or generate "other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 890.

The Petitioner contended that his proposed consulting business "has significant potential to train and employ U.S. workers and meet the growing demand for data literacy." He stated that the undertaking would also fuel small-business productivity, competitiveness, and growth.

As the Director found, however, the record lacks sufficient evidence that the Petitioner's business would have national implications. His business plan and other evidence does not sufficiently demonstrate the consultancy's significant potential to employ U.S. workers or generate other economic benefits on a nationally significant level. The record also does not indicate the business's proposed operation in an economically depressed area. Further, the Petitioner has not demonstrated that the consultancy would provide significant advances in the fields of business consulting, business intelligence, data analytics, or data visualization.

When considering national importance, USCIS focuses on a petitioner's specific proposed activities rather than on their occupation or field. In *Dhanasar*, for example, we agreed that instructing U.S. students in science, technology, engineering, and mathematics (STEM) disciplines has substantial merit. *Matter of Dhanasar*, 26 I&N Dec. at 893. But we found insufficient evidence that the specific classroom teaching proposal demonstrated national importance by "broadly" affecting the STEM education field. *Id.* Similarly, we agree that the Petitioner's proposed consultancy for small businesses has substantial merit. But the record does not sufficiently establish the specific proposal's potential to rise to a broad, nationally important level.

Although not before the Director in the underlying proceedings, the Petitioner on appeal contends that his government work in Venezuela included developing safeguards against election fraud. He contends that his proposed endeavor could develop similar safeguards in the United States "to restore the trust of the electorate in the democratic process."

The Petitioner, however, did not submit sufficient evidence to support his purported ability to develop election-fraud safeguards. In connection with a "situation room" established for a Venezuelan state government, the record contains a document that, in part, discusses voting and voting centers. But the document does not specifically describe the development of election-fraud safeguards or the Petitioner's involvement in fighting voter fraud. Counsel asserts that the Petitioner prevented fraudulent voting in Venezuela. But counsel's assertions are not evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). The Petitioner had to substantiate counsel's statements with independent evidence, which could have included affidavits or declarations. Also, the record lacks evidence that his proposed efforts to fight election fraud in the United States would have national implications.

For the foregoing reasons, the Petitioner has not demonstrated that his proposed endeavor has national importance. We will therefore affirm the petition's denial.

Our affirmance resolves the appeal. Thus, we need not review the Director's additional findings, including the additional denial ground finding insufficient evidence of the requested waiver's benefit to the United States. We will therefore reserve those issues' consideration in case their resolutions later become needed. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.")

III. CONCLUSION

The Petitioner has demonstrated his qualifications for the requested EB-2 immigrant visa category and the substantial merit of his proposed U.S. work. But the record does not establish that his endeavor has national importance. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.